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The ruling of the judge of the Memphis Criminal Court, in admitting to bail Miss Johnson, charged with being accessory to the murder of Miss Ward by Miss Mitchell, strikes us as remarkable. Bail was asked for the prisoner principally upon the ground that her health was being injured by confinement. The court, while "clearly of the opinion that the proof is evident that the defendant aided and abetted in the commission of the crime with which she and her co-defendant are charged, the crime, the most shocking and malignant ever perpetrated by women," admitted her to bail upon the ground of her ill health. In other words, while in effect holding the defendant guilty of an offense which is absolutely non-bailable, he admits to bail upon grounds not generally recognized as sufficient. There may possibly be in the practice peculiar to that State some authority for the ruling of the court, but to the general practitioner, who knows that in most jurisdictions the offense of murder is non-bailable where the proof is evident or the presumption great, the conclusion of the court seems absurd and unwarranted.

The old and time-worn discussion as to whether the jury are judges of both law and fact in criminal cases, was the subject of contention in a late Pennsylvania case. The judge below refused to instruct the jury that they were the judges of the law and the fact, but did instruct them that they were bound to decide the case on the law and the evidence, and that the court's statement of the law was the best evidence of the law which the jury had, and therefore in view of the evidence, and viewing it as evidence only, the jury must be guided by what the court said was the law. This ruling was affirmed in the Supreme Court, Paxton, J., saying that the charge of the court was the best evidence of the law within the jury's reach. Mitchell. J., denied emphatically that the jury are judges of law, as well as fact. He said that the doctrine arose from the power of a jury to give general verdicts which, if in favor of an acquittal, could not be revised by the court. But to prove the doctrine true, a court should have no power of revision when the verdict was against the provision. This right of revision had never been disputed, and conclusively negatives the jury's right to be judges of the law.

We find in the *Weekly Law Bulletin* the report of the case of Deem v. Resinger, in one of the lower courts of Ohio, in which it is held that by the statute of descents of that State, one who murders his parent for the purpose of inheriting the parent's property, is not thereby prevented from inheriting such property. It will be recalled that this was the question which arose in Riggs v. Palmer (29 Cent. L. J. 470), wherein the Court of Appeals of New York held that a beneficiary who murders his testator cannot take under the will. There was a vigorous dissenting opinion in that case, and considerable difference of opinion arose as to the correctness of the ruling of the court, many taking the ground that, there being no exception, on account of crime, in the statute of wills, it was not within the power of the court to alter the plain rules of descent of property. In a later case, the Supreme Court of Nebraska, in Shellenberger v. Ransom (32 Cent. L. J. 333), followed the New York case and read into the statute of descents and distributions of the former State a disinheriting clause, as the New York court had read into the statute of wills a revocation clause. A North Carolina case (Owen v. Owen) is opposed to the doctrine announced in these cases. The court, in the Ohio case first mentioned, takes the position that the legislature having failed to make any exception in the law as to descents, it is not within the power of a court so to do. This doctrine commends itself to us. Though, perhaps, it ought not to be the law, yet, in the absence of legislative action, it is difficult to reach any other conclusion. It will be interesting to note the conclusion of the Supreme Court of Ohio upon the subject.

NOTES OF RECENT DECISIONS.

NEGLIGENCE—INJURY TO WIFE—CONTRIBUTORY NEGLIGENCE OF HUSBAND.—In Louisville, N. A. & C. Ry. Co. v. Creek, decided by the Supreme Court of Indiana, a wife, free from negligence, was riding with her husband over a railroad crossing, and was injured by the negligence of the railroad company. Her husband was guilty of contributory negligence. It was held that the husband's negligence could not be imputed to the wife. The court said:

The principal argument of appellant's counsel is directed to the question of imputed negligence. Their position is that because of the relations existing between husband and wife, and because of his duty to care for and protect her, if a wife places herself in her husband's care by riding in a conveyance driven or controlled by him, and he is guilty of negligence in the control or management of the conveyance, his negligence is her negligence. If she is at the same time hurt by the negligence of another, being herself entirely free from fault, yet if the husband's negligence contributes to her injury, his negligence will be imputed to her and she cannot recover. We cannot sanction this doctrine. It was expressly repudiated by this court in the case of Miller v. Railway Co., 27 N. E. Rep. 339. There are cases where the negligence of one person will be imputed to another; but, as stated in the case last cited, the extreme doctrine has never been sanctioned by this court. See, also, City of Michigan City v. Boeckling, 122 Ind. 39. The extent to which the doctrine of imputable negligence is recognized in this State is thus stated by Mitchell, J., in Town of Knightstown v. Musgrove, 116 Ind. 121: "Before the concurrent negligence of a third person can be interposed to shield another, whose neglect of duty has occasioned an injury to one who was without personal fault, it must appear that the person injured and the one whose negligence contributed to the injury sustained such a relation to each other in respect to the matter then in progress as that in contemplation of law the negligent act of the the third person was, upon the principles of agency or co-operation in a common or joint enterprise, the act of the person injured. Until such agency or identity of interest or purpose appears, there is no sound principle upon which it can be held that one who is himself blameless, and is yet injured by the concurrent wrong of two persons, shall not have his remedy against one who neglected a positive duty which the law imposed upon him." The court in the same case further says: "When one accepts the invitation of another to ride in his carriage, thereby becoming in effect his comparatively passive guest, without any authority to direct or control the conduct or movements of the driver, or without reason to suspect his prudence or competency to drive in a careful and skillful manner, there is no reason why the want of care of the latter should be imputed to the former, so as to deprive him of the right to compensation from one whose neglect of duty had resulted in his injury." We can see no good reason why the foregoing statement may not apply to a wife riding with her husband with as much reason as to a stranger riding with him; nor why she may not be in such case a mere passive guest, without authority to direct or control his movements, and without reason to suspect his prudence or his skill. A husband and wife may undoubtedly sustain such relations to each other in a given case that the negligence of one will be imputed to the other. The mere existence of the marital relation however will not have that effect.

DIVORCE—TREATMENT INJURING HEALTH—"CHRISTIAN SCIENTIST."—A divorce case, somewhat out of the usual run, has recently been decided by the Supreme Court of New Hampshire. The case is Robinson v. Robinson, 23 Atl. Rep. 362. The plaintiff was a man of peculiar disposition and morbid temperament. After his marriage with defendant their relations were happy for two years, when she became a believer in "Christian Science," and thereafter commenced to practice as a "healer," and continued such practice in spite of plaintiff's objections. It appeared by the undisputed testimony of a large number of witnesses, including physicians, that plaintiff became morose, moody and inattentive to business, and it was established that the reason of the change in his habits was his wife's persistence in the practice of "Christian Science" and his changed domestic relations. It was also shown that defendant, in practicing "Christian Science," intended no injury to plaintiff, and was sincere in her belief in the doctrine. And it was admitted or proved that her character was kind and peaceable as a wife, mother and neighbor. The statutes of New Hampshire provide that a divorce shall be granted, among other causes, "when either party has so treated the other as seriously to injure health," or "when either party has so treated the other as seriously to injure reason." A divorce was granted to the husband, the court saying, in part, as follows:

"The provision is to be construed in view of the mischief it sought to cure. It was intended to provide for a divorce of the parties in cases of the character referred to, when the conduct complained of did not fall within the established definition of extreme cruelty. It gave by legislation the relief which the English courts, pressed by the weight of the same considerations, have gone far to afford (Paterson v. Paterson, 3 H. L. Cas. 308, 318, 319, 325, 329 [1849]; Kelly v. Kelly, L. R. 2 Prob. & Div. 31 [1869]; Bish. Mar. & Div., 4th ed., sec. 722, note), and which the courts of some jurisdictions, under like pressure, have afforded by a more liberal interpretation of the term 'cruelty' (Butler v. Butler, 1 Pars. Eq. Cas. 329; Powelson v. Powelson, 22 Cal. 358; Latham v. Latham, 30 Grat. 307; Cole v. Cole, 23 Iowa, 433; Gholston v. Gholston, 31 Ga. 625; Palmer v. Palmer, 45 Mich. 150, 7 N. W. Rep. 760; Carpenter v. Carpenter, 30 Kan. 712, 2 Pac.

Rep. 122; McMahan v. McMahan, 9 Or. 525; Kelly v. Kelly, 18 Nev. 49, 1 Pac. Rep. 194; Jones v. Jones, 60 Tex. 460). Whether one party has been so treated by the other as seriously to injure health or endanger reason is a pure question of fact. It cannot be declared, as matter of law, that any particular treatment may not have that effect. The gist of these causes of divorce is the injury to health and the danger to reason. Conduct which to a serious extent produces either, though not intended to have such a result, though it be 'purely self regarding,' and not 'directed towards' or 'forced even upon the knowledge of' the other party, 'otherwise than by the usual intimacy of matrimony' (W. v.W., 141 Mass. 495, 496, 6 N. E. Rep. 541) is a cause of divorce. Any behavior of one party which affects the other physically or mentally is 'treatment' within the meaning of the statute. A narrower sense cannot be given to the language used without ignoring the extent of the evil to be cured and depriving a large proportion of those who suffer from it of the protection the legislature intended to provide for them. The purpose of the legislature was to make the remedy co-extensive with the mischief. A malevolent motive in the party complained of need not be shown. Divorce is not punishment of the offender, but relief to the sufferer. Whether the behavior proved is a sufficient ground of divorce depends on the question whether it has seriously injured health or endangered reason. This is the sole test. The question is not whether the treatment reasonably ought or could reasonably be expected seriously to injure the health or endanger the reason of a person of ordinary intelligence and mental strength, but whether it has in fact had that effect upon the health or reason of the person complaining. A course of conduct which would drive one person crazy might have no effect on or even be grateful to another, and perhaps more sensible or less sensitive, person, but he or she whose reason is imperiled by it is not, therefore, to be compelled to endure the treatment. That the conduct complained of is in itself innocent, or even laudable, and is pursued from a sense of duty, does not afford a sufficient reason for requiring the party injured by it to submit to the destruction of health, reason, or life. The abstract reasonableness of the treatment, or its effect upon reasonable persons of ordinary firmness does not enter into the question. If it did the redress intended by the statute could not, in many cases, be obtained. The provision was designed for the benefit of the sensitive, not excepting the abnormally sensitive, and not for the insensible and apathetic, whom nothing but blows can affect. It was intended to reach an provide relief in a class of cases where extreme cruelty, as defined by law, cannot be established; cases, among others, of slow and continuous mental torture, destructive of health or reason, and caused by conduct not necessarily wrongful, possibly even praiseworthy in itself, and made a cause of divorce only because of its effect upon an abnormally sensitive mind. The case finds that the defendant's conduct, as therein detailed, has seriously injured the plaintiff's health, and the court cannot say that the finding is not warranted by the evidence (Jones v. Jones, 62 N. H. 463, 467). Divorce decreed."

We quite agree with the editor of the *New York Law Journal* in the opinion that this "is fallacious reasoning and practically very dangerous doctrine. The weakness of the argument lies in the assumption that 'any behavior of one party which affects the other physically or mentally, is treatment within the meaning of the statute.' It is, in effect, saying that any conduct which merely offends the sense or taste of a supersensitive person, and injures his health through the ensuing mental worry, is sufficient ground for divorce.* * * If divorces are to be granted because of the effect upon one's nerves of a wife's religion or a husband's politics, it would be better to come out frankly and confide the divorcing power generally to the discretion of the court or jury. The interests of society would greatly suffer if any person were to be allowed to take advantage of his own abnormal disposition and his indulged and perhaps cultivated peculiarities in order to rid himself of a wife who was without fault, but asserted a legitimate individual liberty."

ADMINISTRATION—EXECUTOR INDEBTED TO ESTATE—INTEREST.—A question of considerable interest in the law of administration arose in the case of Young v. Thrasher, before the St. Louis Court of Appeals. It appears that at the death of the testator, the executor was indebted to him on two promissory notes, then due with interest. The executor inventoried the notes *as notes*, and in his final settlement in 1889, charged himself with the principal sum and interest to the date of the inventory, in 1886. It was insisted on the other side that the executor should be charged with interest on the notes to the date of the final settlement. The probate court held otherwise. The circuit court upon appeal reversed this ruling, and the court of appeals now hold that the circuit court committed no error in charging the executor with interest, down to the time of his final settlement. Judge Biggs dissents from the conclusion. The court says, through Thompson, J.:

Section 98 Revised Statutes 1889 reads: "All debts due by an administrator to his testator or intestate shall be considered as assets in his hands." The succeeding section 1990 reads: "If any person appoint his debtor executor of his will, such appointment shall not discharge the debt, but it shall be *assets* in his hands." At common law, when a person voluntarily assumed the administration of an estate to which he was indebted, *prima facie*, the acceptance of the trust was considered as payment of the debt, and the administrator would be treated as holding the amount of the debt in trust for creditors and heirs. This rule is based on the principle that where

the same person is liable to pay money in one capacity and to account for it in another, the law will presume that he has done that which it was his duty to do, that is, paid the debt. Winship v. Bass, 12 Mass. 204; Stevens v. Gaylord, 11 Mass. 256; Ipswitch v. Story, 5 Metc. (Mass.) 313. It was also a principle of that law that where a testator in his will appointed his debtor as his executor, he thereby forgave the debt so far as residuary legatees were concerned. That principle does not seem to have been recognized to any very great extent in this country, and it has been abolished by statute in some of the States of the Union.

That it was the intention of the two sections above quoted to abrogate that rule admits of no doubt. As was said by Sherwood, J., in McCarty v. Frazer, 62 Mo. 264: "The manifest object of these statutory provisions is to reduce to the same plane all debts due the estate, whether owing by the executor or any other debtor." A majority of this court are also of opinion that these statutes abolish the common law rule that when an administrator takes charge of an estate the debts due by him to the estate, however evidenced, are deemed to have been paid, and he is chargeable with them in his trust capacity as for so much money. It is undeniably logical that if the statute leaves this principle of the common law in operation, from the moment that an executor or administrator takes charge of an estate, all that he owes to the estate in his individual capacity, whether by bond, bill, note or otherwise, becomes so much money in his hands belonging to the estate, for which his sureties in his administration are liable. This conclusion, which is undeniably logical, has been more than once recognized in judicial decisions. In Simon v. Albright, 12 Serg. & R. (Pa.) 429, it was held that one administrator cannot sue his co-administrator on a bond given by the latter to the intestate in his life-time to secure a loan. The court, in the course of its opinion, say: "The debt due from the defendant was assets in his own hands, which if not accounted for according to law, his administration bond might have been put in suit." Nor would it make any difference with the operation of this principle of the common law whether the administrator or executor were solvent or insolvent. This is shown by Leland v. Shelton, 1 Allen (Mass.), 531, where it was held that debts due to the estate of a testator from the executor named in his will, and from the firm of which the executor is a member are to be treated and accounted for as assets; and this although he and his firm were insolvent at the time when he accepted the trust, and although he has not charged himself with such assets in his accounts, and although an account has been allowed by the probate court in which they are not included, but are mentioned merely as notes which it has been impossible to collect; and notwithstanding the further fact that the executor has resigned his trust, and that an administrator *de bonis non* had been appointed in his place. But in McCarty v. Frazer, *supra*, the supreme court of this State held that, under the operation of our statute, debts due by the administrator to the intestate do not become moneyed assets by operation of law in such a sense as to make the sureties in his administration bond responsible for their proper administration. We agree with the Kansas City Court of Appeals as to the effect of that decision, in the following passage from an opinion of that court by Judge Ellison: "The effect of that decision is, that the mere fact of the administrator owing the debt to the estate does not make the debt actual money, but it remains a debt like any other, good or bad, as the case may be. And, being like any other debt, it must be inventoried and accounted for as any other debt. Not to account for it in administration is a *devastavit*, and renders the administrator liable to the proceedings provided for in the sections of the statute above noticed" (referring to the other sections of the statute). Ridgway v. Kerfloot, 22 Mo. App. 665. The just conclusion seems to be that the operation of the statute is to prevent the assets being transmuted into money as soon as the administrator takes possession of the estate, but that it leaves them in his hands to be collected and accounted for exactly as any other assets. McManus v. McDowell, 11 Mo. App. 443. If, as in this case, the debt is evidenced by notes, the assets remain in the form of such notes until the executor by some unequivocal act, as by charging himself in his account with so much money, canceling the notes, or otherwise, expresses a plain intention of paying them. If they bear interest, the estate is entitled to that interest according to their tenor, until they are thus paid. In other words, the estate is entitled to it as long as the testator would have been entitled to it had he lived. The mere fact of his having appointed the maker of his note as his executor does not change his contract with the latter; nor can the latter, by taking out letters testamentary on the estate of his creditor, diminish his own liability to that estate in the slightest degree, but the contract is to have its full legal effect, just as much as though it were the contract of some third person.

Nor is it perceived how such a question can be made to turn upon an inquiry into whether the executor was solvent or insolvent; that is, solvent in the sense of being unable to pay all his debts, or in the mercantile sense of being unable to pay his debts as fast as they mature, and yet solvent in the sense of being able to pay this particular debt. As the debtor has in this State the right to prefer his creditors, the only solvency which in this relation could be made the subject of an inquiry would be the solvency of the executor in the sense of his being able to pay this particular debt. To what extent the statement of Shaw, C. J., in Kenney v. Ensign, 18 Pick. (Mass.) 235, that on technical ground as well as on considerations of policy, an administrator is not permitted to show that he could not collect a debt due from himself holds good, even under the rule established in McCarty v. Frazer, *supra*.

A majority of the court are, then, of opinion that the word "assets" in the above statute is not equivalent in value or meaning to the word money. An executor who owes money to the estate of the decedent on overdue notes may inventory them as money. By so doing he at once charges his sureties with so much money on hand, and his subsequent insolvency does not relieve them; nor does his insolvency at the time when he made the inventory, unless it amounts to a total inability to pay, because even an insolvent debtor may pay his debts. But if he inventories them as notes, as the executor did in the present case, he is responsible and remains responsible on them as notes. The character of the assets is not changed by the appointment of the debtor as executor.

This also seems the view most beneficial to the estate. The right of the executor to get credit for uncollectable assets does not depend upon the fact whether or no the debtors are insolvent, but it depends upon the fact whether he could have collected the assets by using such diligence as the law imposes upon a trustee. Williams v. Petticrew, 62 Mo. 471. Now, it will not be contended that when an executor was a debtor of the estate on an overdue obligation and was solvent at the

date of filing his inventory, he could not have collected that debt from himself. It then becomes his duty to pay it, if he can pay it, and his subsequent insolvency cuts no figure in the case. The case of McCarty v. Frazer, *supra*, has reference to a state of facts where the debts are worthless as assets at the date of filing the inventory.

We have been referred to several decisions as having a bearing upon this question, but none of them are directly authoritative. The case of Eichenberger v. Morris, 6 Watts (Pa.), 42, decided the question under the rule of the common law. In Kinney v. Ensign, 18 Pick. (Mass.) 232, the common law principle was stated by Chief Justice Shaw; but the court refused to apply the principle so as to prevent an administrator from exercising his right to redeem a mortgage for the estate. In several decisions of the Court of Appeals of New York which have fallen under our notice (Soverhill v. Suydam, 55 N. Y. 140; Paubus v. Stover, 89 N. Y. 1; *Re* Consolus, 95 N. Y. 341), the question arose under the following statute of that State: "The naming of any person executor in a will shall not operate as a discharge or bequest of any just claim which the testator had against such executor, but such claim shall be included among the credits and effects of the deceased in the inventory; and such executor shall be liable for the same as for so much money in his hands at the time such debt or demand becomes due; and he shall apply and distribute the same in the payment of debts and legacies, and among the next of kin, as part of the personal estate of the deceased." A statute so explicit in its terms left no room for judicial construction; and the directions under it are hence inapplicable to the question before us.

CORPORATIONS — STOCK SUBSCRIPTIONS — PAYMENT IN LAND — OVERVALUATION. — In Clayton v. Ore Knob Copper Co., 14 S. E. Rep. 36, it appeared that the stockholders of a corporation instituted proceedings for the appointment of a receiver. Afterwards a judgment creditor was made a party, to the end that he might share in the assets, and the suit was then referred to a referee. No question of fraud as to the payment of the stock was raised by the pleadings. The referee found, however, that it had never been paid in cash, but that certificates had been issued to the incorporators in proportion to their several interests in certain real estate, which was transferred to the corporation. He did not find, as he should have done, if such was the fact, that the property was transferred with the understanding that it should be received as payment for the stock, and no evidence was offered to show the value of the property at the time the stock was issued. It was held that as such a finding was essential to the disposition of the suit, and the payment was legitimate only in case it was not grossly inadequate and made for a fraudulent purpose, the finding that the receiver neither had, nor ought to have had, any assets in his hands applicable to the judgment of the creditor, was unwarranted, and the cause should be remanded with directions to the referee to find the real value of the property. Avery, J., dissented from the conclusion of the court, saying *inter alia:*

The proposition to remand, with direction to the referee to ascertain the real value of the property, is insisted upon on the ground that the burden is upon the stockholders, where there is no allegation of fraud or overvaluation, to show affirmatively that property conveyed as stock to a private corporation was worth the par value of the stock received, (though such stock, when issued, could not be sold in the market for 10 cents on the dollar), or to account to the creditors of the corporation to the extent of the sum ascertained by subtracting the real value of the property from the par value of the stock. Cook, (Stocks, §§ 44, 47, 48), states the principle to be the very reverse of that contended for here. He says: "In order to reach the person receiving paid-up stock for property, the corporate creditors [not the corporators] must prove three things." He must prove—First, that "the property was overvalued, and unreasonably overvalued; secondly, that the overvaluation was intentional and fraudulent; thirdly, that the person so receiving stock made a profit thereby." If the doctrine laid down by him is supported by the weight of authority both in this country and in England, as it seems to be, the burden would be on the creditor of a private corporation to show a fraudulent overestimate; and it seems scarcely necessary to cite the numerous decisions of this court to establish the proposition that he who rests his right of recovery on such ground must both allege and prove the fraud. The judgment creditor, Black, has instituted no proceeding for the purpose of assailing the good faith of the corporators. To require the stockholders and promoters of a corporation to take up the laboring oar, and negative the possibility that there may have been a fraudulent and intentional overvaluation of a copper mine, would be to make a dangerous and radical change in a well-established rule of evidence to meet the emergency of a supposed hard case. There can be no more doubt as to the liability of the stockholders in such cases, where fraud is properly alleged and proven by the injured party, than there is that the promoters of a pretended corporation are responsible for loss sustained by persons who give credit to the corporation by reason of their false and fraudulent representations.

In the case of Steacy v. Railroad Co. 5 Dill. 348, (10 Myers, Fed. Dig. "Corporations," § 167), Judge Dillon held, not only that shares of stock issued to a contractor for the construction of a railroad, in payment for work that was never done were presumably valid, put that, after passing into the hands of innocent purchasers, such shares could not, even on proof of a fraudulent arrangement between the company and contractor, be assessed to pay the difference between the par value of the stock and the real value of the work done by the contractor. The same learned judge declares in Phelan v. Hazard, 5 Dill. 45, 47 (10 Myers, Fed. Dig. "Corporations," §§ 156, 157), that property taken for stock must be held a full payment for such stock, as against creditors, until the agree-

ment to take it is impeached and rescinded for fraud in a direct proceeding for that purpose; and that the creditor could not show "that the property accepted by a company in full payment of it stock was not fully worth the price of the stock, and thus compel the holder of the stock to pay the difference between such price and the alleged value of the property. 10 Myers, Fed. Dig. p. 47, §§ 127, 128. Judge Dillon cites to sustain his position a number of English cases; among them the case of *In re* Baglan Hall Colliery Co., L. R. 5 Ch. App. 346, and Pell's case, *Id.* 11. In the former case, 10 persons, after working a coal mine, which they owned as tenants in common, for some time, formed a corporation with a capital stock of £20,000, and conveyed to it the colliery for "a number of shares proportioned to their respecitve interests." It was held that, in the absence of fraud, the shares should be taken "as paid up by handing over the colliery," just as it should be assumed that the stock in our case was fully paid by the transfer of a copper mine instead of a coal mine. In Pell's Case, *supra*, it was held that the payment of shares of stock in a private corporation in property must be held a payment in full, till impeached for fraud. See, also, Coats' Case, L. R. 17 Eq. 171; Anderson's Case, 7 Ch. Div. 75; Schroder's Case, L. R. 11 Eq. 131; Bush's Case, L. R. 9 Ch. App. 554; Spargo's Case, L. R. 8 Ch. App. 407; Savage v. Ball, 17 N. J. Eq. 142; Smith v. Mining Co., 1 Nev. 423; Goodrich v. Reynolds, 31 Ill. 490; Spense v. Valley Co., 36 Iowa, 407.

Proceeding upon the principles established by the authorities cited, and generally recognized by the legal profession, private corporations have been and are constantly being organized and reorganized all over the State of North Carolina under the general act (Code, ch. 16) for the purpose of working mines of various kinds and with the view of promoting the growth and development of our towns. All of these companies are authorized to hold as much as 300 acres of land, and those organized for mining and manufacturing purposes are not confined within that limit. Code, § 666. In all of these companies, land at an agreed price constitutes a portion of the assets of the corporation, and has been taken for a part or the whole of the shares of capital stock. The prosperity of some sections of our State depends in a large measure upon the development of mines by foreign and domestic corporations. The prices of this species of property are so fluctuating, and are so often fixed by the reports of their officers sent to London, Liverpool, or New York, of which our citizens have no notice and in which they take no interest, that it would clog and embarrass these operations, and prevent the expenditure of thousands of dollars which we have reason to expect would otherwise continue to be expended in the State if all such corporations should be put upon notice that stockholders who hereafter advance money to develop mines or improve the real estate taken as stock, and attempt to secure such advancement by a mortgage of the property or a judgment confessed by the company so as to constitute a lien upon it, take upon themselves, as against creditors who acquire subsequent liens, the burden of showing that their property, originally accepted in full payment of shares of stock, was not overvalued because such property, when sold at a forced sale under execution, brought a price far below the par value of the stock for which it was sold. Well-established rules of evidence must not be made to depend for their existence upon the fluctuating prices of mining property. A party relying upon fraud as a reason for holding a stockholder to such unusual liability should be required to institute a direct proceeding to impeach the payment of stock, and to take upon himself the burden of proving, not only that there was an overvaluation, but that it was intentional and fraudulent. Cook, Stocks, § 44.

EVIDENCE—DECLARATION—RES GESTÆ. — In Ehrlinger v. Douglas, 50 N. W. Rep. 1011, the Supreme Court of Wisconsin hold that in an action to recover for killing plaintiff's dog, the declaration of defendant's wife just before the killing that the dog snapped at her, is not part of the *res gestæ*. Lyon, J., says:

Under the charge of the court the jury necessarily found that the dog attempted to bite defendant's child; otherwise their verdict must have been for plaintiff. Either there is a failure to incorporate all the testimony in the bill of exceptions, or the learned circuit judge misapprehended the testimony, for it does not tend to show that the dog attempted to bite the child. We will dispose of the case, however, as though the question submitted had been whether the dog attempted to bite the defendant's wife instead of his child, and will assume that the court correctly instructed the jury that, if the dog did so, the defendant was justified in killing him. There is no testimony that the dog attempted to bite the wife, other than the testimony of defendant that she said so when she came out of the house and called him, just before the shooting. Upon this testimony alone the judgment rests. The court held, against objection and exception, that the testimony pertained to the *res gestæ*, and hence was competent to prove the attempt of the dog to bite the wife. We are of the opinion that this testimony was mere hearsay, and therefore inadmissible. Had the dog bitten the wife, and were this an action by her to recover damages therefor, probably what she said on coming out of the house would have been a part of the *res gestæ*, and might have been shown. But in this case the essential fact is the shooting of the dog; and the alleged attempt of the dog to bite is an antecedent and independent fact, which must be proved by legal evidence before it can be made available as a justification for the subsequent act of shooting committed by the husband, who was not present when the attempt was made to bite the wife. Had the defendant, immediately after the shooting, said, "This dog attacked me, and I killed him," that would probably be part of the *res gestæ*. But we are aware of no rule of evidence which stamps that character upon a statement, made by a third person to the defendant, of an antecedent fact or circumstance, so that proof that the statement was thus made becomes competent evidence to prove the truth of the statement. In Felt v. Amidon, 43 Wis. 467, this court approved the doctrine of Lund v. Tyngsborough, 9 Cush. 39, wherein it is said: "There must be a main or principal fact or transaction, and only such declarations are admissible as grow out of the principal transaction, illustrate its character, or contemporary with it, and derive some degree of credit from it." Per Fletcher, J., page 42. In 1 Greenl. Ev. § 108, note 2, this case is fully approved as containing a correct statement of the law as to what declarations are admissible as parts of the *res gestæ*. As already observed, the main or principal fact or transaction in this case is the shooting of the dog. Most assuredly

the declaration of the defendant's wife that the dog attempted to bite her did not grow out of such fact or transaction; neither does it derive any degree of credit therefrom, because the act of shooting had not been committed or contemplated when the declaration was made. It may be that testimony of the declarations of the wife might have been admissible to disprove malice on the part of the defendant, were the plaintiff seeking to recover exemplary damages. But he only seeks to recover the value of his dog, and the court charged the jury that such value was the measure of damages. Hence the question of malice is not in the case, and it was error to admit the testimony of the declarations of the wife for any purpose. This rule is not affected by the fact that she is an incompetent witness for her husband to prove the fact. It is the misfortune of the defendant,—a misfortune which he shares in common with very many litigants,—if he is unable to prove his defense. The judgment of the circuit court must be reversed, and the cause will be remanded for a new trial.

THE PUNCTUATION OF STATUTES AS AFFECTING THEIR INTERPRETATION.

As a general rule, punctuation has no effect on the interpretation of deeds, statutes, or any legal writing whatever. The reason is not far to seek. As was said by Lord Kenyon, in Doe v. Martin:[1] "We know that no stops are inserted in acts of parliament, or in deeds; but the courts of law, in construing them, must read them with such stops as will give effect to the whole." The Master of the Rolls, in Barrow v. Wadkin,[2] made the same discovery when he undertook, in deference to his office, to examine the original statute. The reason of this practice is undoubtedly to be found in the conservatism of parliament; its original cause having early disappeared. When the first statutes of the Kingdom of England were enacted, the art of punctuation was yet in its infancy. Mr. Barrington informs us, in his observation on the statutes (5th ed. 438, note *x*), that the full point was not known till the time of Dante, and suggests that the better way of printting statutes would be without the use of stops—a suggestion which would certainly prevent the raising of any question on the punctuation, and save the courts the trouble of repeating the rule.

As the engrossed copies of statutes are without stops, those inserted in the printed copies are the work of the clerk, the printer, or some equally irresponsible person; and it is so easy to altogether alter the meaning of a sentence by the punctuation, that it is clear that there is no certainty that the punctuation represents the meaning in which the statute was understood by the legislature. But where, as in England, at present, the official record of the statute is a printed copy, printed on vellum by the Queen's printer,[3] and therefore the punctuation appears on the roll, there has been some question as to whether it was not now to be considered as part of the statute. Jessel, M. R., inclined to this opinion in Venour's Settled Estates,[4] but the opposite view was strongly advocated by Willes, J., in Claydon v. Green.[5] Jessel's opinion was mentioned with disfavor in Attorney-General v. Great Eastern Ry. Co.,[6] and was finally disavowed by Jessel himself in Sutton v. Sutton.[7]

In America, where the record of the statute is still an unpointed copy, no such consideration arises; and the fact that printed copies are sold as official, under the authorization of acts of the legislature, does not alter the case. Accordingly, there are a number of decisions upon this point, all deciding that punctuation is no part of a statute, and should not be considered in construing it.[8] And it is held that the courts are at liberty not only to disregard the punctuation, but to repunctuate, if that would be necessary to give the statute its proper interpretation.[9] Price v. Price,[10] is perhaps an extreme example of the length to which courts will go in this respect. In that case the printed copy of the statute in question read thus: "In all cases under this act, in

[1] 4 T. R., on p. 65.
[2] 24 Beav. 327.
[3] Maxwell on Stat. (2d ed.) p.
[4] 2 Ch. D. 522.
[5] 3 L. R. C. P. 511.
[6] 11 Ch. D. 449.
[7] 22 Ch. D. 511.
[8] Pancoast v. Ruffin, 1 Ohio, 381; Price v. Price, 10 Ohio St. 316; Hamilton v. Steamboat Hamilton, 16 Ohio St. 428; Allen v. Russell, 39 Ohio St. 336; Albright v. Payne, 43 Ohio St. 8; U. S. v. Three R. R. Cars, 1 Abb. (U. S.) 196; Cummings v. Akron Cement Co., 6 Blatchford, 509; Randolph v. Bayne, 44 Cal. 366; Gyger's Estate, 65 Pa. 311; Morrill v. State, 38 Wis. 428; Caston v. Brock, 14 S. Car. 104; Archer v. Ellison, 28 S. Car. 238; Matter of Olmstead, 17 Abb. N. Cas. 320; Cushing v. Worrick, 9 Gray (Mass.), 382; Martin v. Gleason, 139 Mass. 183.
[9] Hamilton v. Steamboat Hamilton, *supra*; Hammock v. Loan and Trust Co., 105 U. S. 77.
[10] 10 Ohio St. 316.

which the court of common pleas shall dismiss the petition, except on the final hearing of the case on its merits, in cases in which the court shall give judgment in favor of the wife for alimony alone, without granting a divorce, in cases under section fourteen of said act, and in cases where judgment is rendered for both divorce and alimony, either party may appeal from any final judgment or order to the district court as in other cases." The court held that it should be interpreted as if it were punctuated as follows: "In all cases under this act in which the court of common pleas shall dismiss the petition (except on the final hearing of the case on its merits); in cases in which the court shall give judgment in favor of the wife for alimony alone, without granting a divorce; in cases under section fourteen of said act, and in cases where judgment is rendered for both divorce and alimony; either party may appeal from any final judgment or order to the district court as in other cases."

The same rule has been applied to criminal as to civil statutes, although here it might have been expected that the courts would show a leaning toward the defendant. In R. v. Oldham,[11] it was held that a hyphen between two words should be changed to a comma; and, curiously enough, in U. S. v. Isham,[12] it was held that a comma between two words should be changed to a hyphen. The general rule was asserted in cases cited below.[13]

The substance of all these decisions is that the meaning of a statute should first be ascertained by the usual canons of construction; and if that is clear and consistent, the punctuation, for the reason previously mentioned, should not be allowed to affect that construction, but, if not consonant with it, must be disregarded. If, however, there is found any real ambiguity in the meaning, as thus interpreted, recourse may then be had to the punctuation, in order to clear up that ambiguity. But this ambiguity must be a real one; the punctuation cannot be made use of to stir up the uncertainty which its use is expected to clear away; and all other methods and materials of construction must be exhausted before recourse to the punctuation is allowable. In Ewing v. Burnett,[14] it was held that punctuation was a most fallible standard by which to interpret a writing; that it may be resorted to, when all other means fail; but that the court will first take the instrument by its four corners, in order to ascertain its true meaning; and if that be apparent, the punctuation will not be suffered to change it, and in Caston v. Brock,[15] it was said: "Punctuation is the least reliable guide to the sense of the statute, but cannot properly be said to be without any force. In itself it is ordinarily insufficient to fix the sense of a statute when that is disputable, especially when the question is one of the force of a comma; but when the punctuation is strictly consistent with one of two senses, equally grammatical, and inconsistent with the other, it should be allowed the force of opening the question of construction to receiving aid from the context, and from the nature of the purpose the statute has in view. It is certainly competent to cancel the equally weak argument that arises from the relative position in the sentence of the two clauses." Squires' Case,[16] takes a far step in advance, and one that is hardly warranted by authority, when it holds that, "Punctuation often determines the meaning of a sentence as much as any other characteristic of it." It does in other writings, but not in legal ones. These cases must be read in the light of Arcularious v. Sweet;[17] "A single dot over a comma, so easily inserted by mistake or design, and so difficult, if not impossible in most instances, of proof or disproof, can never be allowed thus to overturn the natural meaning of the written words, whether taken by themselves or in connection with the whole instrument. . . . Punctuation may perhaps be restored to when no other means can be found of solving an ambiguity; but not in cases where no real ambiguity exists except what punctuation itself creates."[18] It may be added here, though somewhat foreign to the main subject, that when an indictment consists of two counts, and every fact necessary to constitute the crime is clearly

[11] 2 Den. C. C. 472.
[12] 17 Wall. 496.
[13] Com. v. Shopp, 1 Woodward (Pa.), 123; U. S. v. Rossvally, 3 Ben. (U. S.) 157; U. S. v. Lacher, 134 U. S. 624; Shriedley v. State, 23 Ohio St. 130, and Potter v. State, 9 South. Rep. 402.
[14] 11 Peters, 40.
[15] 14 S. Car. 104.
[16] 12 Abb. Pr. (N. Y.) 38.
[17] 25 Barb. (N. Y.) 403.
[18] See also Trustees of Elizabeth v. White, 29 N. E. Rep. 47.

charged, although the counts are run together and there is no punctuation to indicate the end of one and the beginning of the other, the indictment sufficiently charges each offense.[19]

But when the punctuation is allowed to enter into the interpretation, what punctuation is to govern? Is it that of the bill as it passes the legislature, or that of the officially printed copies? In McPhail v. Gerry,[20] it was held that where there was a difference between the punctuation of the original act and the printed copy, that of the original act should control; the court said, however, that the construction which the printed copy would give was "not the natural one;" so that the question did not turn solely on the punctuation. This case was followed in Potter v. State,[21] where it was said that "the original manuscript of the Code, as adopted by the legislature, governs the printed copy!" But in this case also there was additional consideration that the punctuation of the section under discussion was the same as that of a previous section, and it was said to be a legislative adoption of the prior judicial construction placed on the statute. In State v. Underground Cable Co.,[22] it was claimed that an examination of the journal of the legislature would show that a comma was inserted in the act in the form in which it was adopted by the legislature; but the court refused to consider such testimony, upon the ground that it was engrossed and printed without the comma, and signed in that shape by the governor. Under that state of facts it could hardly be claimed with any show of reason that the comma should be considered as properly belonging to the act. In Ward v. Beal,[23] it was held, in contravention of the ruling in McPhail v. Gerry[24] and Potter v. State,[25] that the punctuation of the printed statute should be followed rather than that of the engrossed bill. "As the statute containing said section was, as punctuated adopted by the legislature, after the enrolling of said bill, it, as to any and all changes, supersedes said bill; besides, the meaning of said section, as thus punctuated, accords with said chapter." Here again the punctuation was not the only factor in determining the ruling of the court. It seems to be the better opinion, and that more consonant with principle, that the punctuation of the bill as signed by the governor, to which circumstance it owes its effect in the great majority of cases, should be followed in preference to that of the bill in any of its earlier stages. But it will be apparent upon an inspection of the cases last cited that the punctuation was in reality a very small consideration in interpreting the statutes; it being followed because it was consistent with the meaning as determined by other circumstances. These cases, then, do not weaken the force of the general rule laid down at the beginning of this article; and it may still be asserted with confidence that the punctuation of a statute has, if any, the very slightest effect on the interpretation of a statute, and in the great majority of cases none whatever.

ARDEMUS STEWART.

[19] 17 S. W. Rep. 700.
[20] 55 Vt. 174.
[21] 9 South. Rep. 402.
[22] (N. J.), 18 Atl. Rep. 581.
[23] 14 S. W. Rep. 967.
[24] *Supra.*
[25] *Supra.*

WIFE'S SEPARATE ESTATE—GIFTS TO HUSBAND—CHECKS INDORSED IN BLANK.

McGUIRE V. ALLEN.

Supreme Court of Missouri, December 22, 1891.

Rev. St. 1879, § 2396, in providing that a wife shall have a separate estate in certain personal property, including choses in action, declares that "the title of any husband to any personal property reduced to his possession with the express assent of the wife" shall not be affected thereby, "provided that such personal property shall not be deemed to have been reduced to possession by the husband by his use, occupancy, care, or protection thereof, but the same shall remain her separate property, unless by the terms of said assent in writing full authority shall have been given by the wife to the husband to sell, incumber, or otherwise dispose of the same for his use and benefit:" *Held*, that a wife cannot make a parol gift of such property to her husband, and her delivery to him without consideration of a check indorsed in blank gives him no right to its proceeds, although she verbally requested him to deposit and use them as his own.

THOMAS, J.: BLACK, J., delivered the opinion on behalf of the majority of the judges of division No. 1 in this case, as follows:

"William McGuire, as the administrator of the estate of Mrs. Susan Allen, brought this action against William Allen, the husband of the deceased, to recover the proceeds of a check. The facts are these: Mrs. Allen was a daughter of

Robert Daniels, who died in 1883, and his heirs constituted Mr. Anderson a trustee to settle the estate. On the 28th of August, 1883, the trustee paid Mrs. Allen $4,556 on account of her distributive share of her father's estate, by a check payable to her order. The trustee handed this check to her husband, the defendant, and he took it home, and gave it to her. She signed her name on the back of the check, and then gave it back to him. He deposited the same in his own name, and used the proceeds. She died in 1886. The evidence shows that Mrs. Allen, at the time she handed the check to her husband, told him to deposit it in his own name, so McGuire and the Parker heirs could not get the money. McGuire, who is the administrator suing, was her son by a former marriage, and the Parker heirs were children of her deceased daughter by such former marriage. There is much other evidence to the effect that Mrs. Allen stated on several occasions that she had given the check or money to the defendant; that he had been a good husband to her; that the money belonged to him, and he could do with it as he pleased; that McGuire had not treated her right, and she did not want him to have any of it. Some of these statements were made at a time when the defendant was using part of the money in building a house upon his own land, as we understand the evidence. Section 3296 Rev. St. 1879, first declares that any personal property, including rights in action, which may have come to a married woman during the coverture by bequest, gift, inheritance, etc., shall be and remain her separate property, under her sole control, etc., and then provides: 'This section shall not affect the title of any husband to any personal property reduced to his possession with the express assent of his wife: provided, that such personal property shall not be deemed to have been reduced to possession by the husband by his use, occupancy, care, or protection thereof, but the same shall remain her separate property, unless by the terms of said assent in writing full authority shall have been given by the wife to the husband to sell, incumber, or otherwise dispose of the same for his own use and benefit.'

"1. This section of the statute, as has been often said, produced a radical change in the law in respect of the right of the husband to his wife's personal property. It secured to her her personal property and choses in action free from any claim of the husband, and free from process of law for his debts, except for his debts created for necessaries for the wife and family. As to all her personal property and choses in action she is in effect a *femè sole*, and the common-law right of the husband to reduce her property to his possession is restricted to the method pointed out in the statute. As said by this court in the case of Rodgers v. Bank, 69 Mo. 560: 'To put an end to all investigations, the law plainly requires the assent of the wife to be in writing;' and, when speaking of this legislation, it is again said in that case: 'It is the obvious intent of our recent legislation to restrict within the narrowest limits the power of the husband over his wife's personalty. Such legislation may lead to hardships, as it does, apparently, in the present case; but the judiciary have no concern with the policy or impolicy of legislative enactments. The legislature have required the written assent of the wife to the husband's reductions of her personal property to his possession.' Following this early ruling and the plain letter of the statute, it has been often held the husband can reduce his wife's personalty to his possession in one way only, namely, by procuring her written assent. Broughton v. Brand, 94 Mo. 169, 7 S. W. Rep. 119; Gilliland v. Gilliland, 96 Mo. 522, 10 S. W. Rep. 139; Hart v. Leete (Mo. Sup.), 15 S. W. Rep. 976.

"2. But it is insisted the blank indorsement of this check is a good and sufficient written assent on the part of the wife, and this because the indorsement of commercial paper in blank constitutes a complete and perfect transfer of all the interest of the indorser, and invests in the indorsee full ownership of the bill. A blank indorsement of a bill for value does import all this, and more; the same as if the undertakings were written out in full. These implied agreements are a part of the contract created by the blank indorsement. But, as between the indorser and indorsee, it may be shown that the indorsement was upon trust for some special purpose—as from a principal to an agent—to enable him to use the instrument or money in a particular way; or for collection merely. 1 Daniel, Neg. Inst. (2d ed.) § 721. The indorsement in this case was without consideration, and was just such an indorsement as would have been proper had the check been handed to the husband for the purpose of collecting the money for the wife. The mere indorsement of the check by the wife, and delivery thereof to the husband, is not an express assent that he may collect the money for his own use and benefit. Franc v. Nordlinger, 41 Ohio St. 298. Our statute still allows the husband to reduce his wife's personal property to his possession, but this only with her express assent. The word 'express' is used in its ordinary legal signification in contradistinction to 'implied;' as, 'express' warranty an 'express' contract. But the statute goes further, and says the terms of this express assent must be in writing, and give the husband full authority to sell, incumber, or otherwise dispose of the property for his own use and benefit. It is therefor clear that implied agreements whether arising from a blank indorsement or otherwise, do not satisfy the demands of this statute. The terms of the assent must be set forth in the writing giving the consent, and that was not done in this case.

"3. An instruction was asked by the defendant, based upon the theory that Mrs. Allen could and did make a parol gift of the check to her husband, which instruction was refused. There was

evidence to support the instruction, so the question is whether a parol gift by her conferred upon him a full and complete title to the check and the money it represented. It seems to be a well-settled law that a married woman may bestow her separate property in equity, by appointment or otherwise, upon her husband as well as upon a stranger. 2 Story, Eq. § 1395. But courts of equity always examined such a transaction with great care and caution, to see that the wife acted from her own will and wish, and not from any undue influence. Says Schouler: 'While instances of gift or voluntary conveyances from husband to wife are most commonly considered, gifts from wife to husband are by no means rare. But in the latter instance fraud or undue influence may be reasonably suspected, and transactions of this sort or scrutinized by the courts with great care. Before the wife's separate use was established in chancery, little or no occasion could arise for the wife to bestow her personal property upon her husband, for the law sufficiently bestowed it without her aid.' Schouler, Husb. & W. § 390. Our statute, before quoted, secures to the wife her choses in action and personal property, and declares that the same shall remain her separate property, and under her sole control. This statute, however, according to its own terms, does not affect the title of the husband to any of the wife's personal property reduced to his possession with her express written assent, The question, then, is whether the husband can acquire his wife's separate statutory property by a parol gift, and we conclude he cannot, and for these reasons: He cannot acquire it by reducing it to his possession with her parol consent. Now, it is difficult to draw any distinction between a parol gift of personal property by the wife to the husband and a reduction of the same property to his possession with her parol assent. The one being prohibited by the statute, the other must be prohibited; for there is no real or substantial difference between the two transactions. In construing and applying this statute we must look to the substance of the particular transaction, and not simply to the name by which it may be called. To attempt to build up any distinction between a parol gift by the wife to her husband, and a reduction of her property to his possession with her parol assent, is to break down and destroy the statute. The statute may, and in this case appears to, work out a hardship, but the remedy is with the legislature. As to whether the wife may, for a valuable consideration, sell and transfer her statutory separate property to her husband in the manner and by the means that she may sell and transfer it to a third person, we express no opinion, for that is not the case in hand. The judgment must be, and is, therefore, affirmed."

Full argument was had before the court in *banc*, and after careful examination of the questions involved we adhere to the result reached in division No. 1, as well as the reasoning upon which the result was reached. The most perplexing problems the courts have to deal with grow out of the property rights of husband and wife, owing to their close, confidential, and business relations. The possession of personal property by one is usually the possession by the other, so far as appearances go. Judicial history teaches that husband and wife can, with great facility and plausibility, impress transactions between themselves with that legal effect which their interest or caprice may dictate; and it was no doubt this consideration that impelled the legislature to enact the statute referred to in Judge Black's opinion herein. Very able and exhaustive arguments have been presented to show that the indorsement in blank of a bill, bond, or note by a wife, and delivery thereof to her husband, meets the requirements of the statute. We do not think so. Without attempting to state what the writing required by the statute must be in form and substance in all cases, we will say that it must unequivocally transfer the title to the property to the husband. And it is evident a blank indorsement of negotiable paper, giving it the full effect the law attaches to it, is not such a writing, for it is conceded that the contract created by a blank indorsement is an implied one, and may be explained by parol. If it should be held that an indorsement and delivery of negotiable paper was a writing, within the meaning of the statute, the very evils the legislature intended to remove would still remain. If it was found to be to the interest of the parties to say it was an absolute transfer of the title, they could say that; if it was to their interest to say that the indorsement and delivery to the husband was merely to authorize him to collect the money for the wife, they could say that; and in either case it would be a difficult matter to contradict them. The best interests of husband and wife and their creditors and others dealing with them require some fixed rule by which their rights can be ascertained and adjudicated. The judgment is affirmed. All concur except Barclay J. who dissents.

NOTE.—This case, as is stated by Barclay, J., the dissenting judge, is of considerable importance, as it directly involves the proper interpretation of a large class of indorsements of commercial paper. The dissenting opinion is so full and exhaustive that we shall make liberal use of it in this note. First. Viewing it from the standpoint taken in the opinion of the majority of the court, is the contract of indorsement an express or implied one? It is held to be implied only, and the result is made to turn on that distinction. It is held that a wife's indorsement to her husband of a check drawn to her order and which admittedly represented her separate property is not an "express assent" by her "in writing" conferring "full authority" "to sell, incumber or otherwise dispose of the same for his own use and benefit." It is stated that a blank indorsement for value does import all this and more, but that import is said to be "implied" and because not "expressed" the indorsement is held inoperative to pass title to the indorsee in this instance. The dissenting judge says that an indorsement in blank has always seemed to him to be an express contract. To adopt the words of another, "it is a

commercial contract and is not in any proper sense a contract implied by the law, much less an inchoate or imperfect contract. It is an express contract and is in writing, some of the terms of which according to the custom of merchants, and for the convenience of commerce are usually omitted but not the less on that account perfectly understood. All its terms are certain, fixed and definite and when necessary supplied by that common knowledge based on universal custom which has made it both safe and convenient to rest the rights and obligations of parties to such an instrument upon an abbreviation. So that the mere name of the indorser signed upon the back of a negotiable instrument conveys and expresses his meaning and intention as fully as if he had written out the customary obligation of his contract in full." Martin v. Cole, 104 U. S. 30. The language quoted was applied to a case where the point of decision was whether or not the contract created by an indorsement was a contract "in writing." It was held that it was in all its parts. That case has since been cited approvingly and followed, in Falk v. Moebs, 127 U. S. 597, and De Witt v. Berry, 134 U. S. 306.

The principle underlying Martin v. Cole, has been recognized in Missouri in the cases excluding evidence of contemporaneous verbal agreements varying the contract of indorsement. Such evidence has been rejected because that contract has been treated as if written out at large. Rodney v. Wilson, 67 Mo. 123; Beeler v. Frost, 70 Mo. 185; Louis v. Dunlap, 72 Mo. 174; Gardner v. Matthews, 81 Mo. 627.

In those jurisdictions where such evidence has been admitted a reason assigned therefor has been that the contract of indorsement was merely an implied one and hence that a different verbal agreement by the parties in any particular case might be shown without thereby contradicting a writing. See Ross v. Espy, 66 Pa. St. 481, and Johnson v. Martinus, 9 N. J. L. 145, though the latter has been overruled by Chaddock v. Vanness, 35 N. J. L. 517. But that idea has not been received favorably in the State of Missouri as cases cited above show. Second. A logical and necessary deduction from the conclusion reached by the majority of the court is that the ordinary indorsement in blank of commercial paper by a wife to her husband (at least where their relationship is exhibited on the paper or is known to the taker) does not subject her (with respect to her separate statutory estate) to the liability of an indorser to subsequent indorsees. The dissenting judge claims that the evidence discloses without contradiction that the wife intended the transaction as a gift of the fund in question to her husband, and that she likewise intended to prevent its reaching the hands of those to whom it will now go under the final rulings herein. The facts in question occurred in August, 1883, after the act of that year relating to married women took effect. The latter added to section 3296 of the revision of 1879, the following language, viz.: "and any such married woman may in her own name and without joining her husband as a party plaintiff, institute and maintain any action in any of the courts of this State having jurisdiction for the recovery of any such personal property including rights in action as aforesaid with the same force and effect as if such married woman was a *feme sole*. Any judgment for costs in any such proceeding rendered against any such married woman may be satisfied out of any separate property of such married woman subject to execution."

Viewing the section in its entirety, the dissenting judge asks what is its true meaning with reference to the point of present difference? "Reduction to possession" is a phrase well known to the law. A husband under the common law might have reduced such a piece of commercial paper to his possession by himself indorsing his wife's name thereon and negotiating it as well as by other acts of his own towards it. The statute was intended to prevent the acquisition by any act of the husband alone, of title to the wife's statutory separate property and to exclude the inference of any transfer of such title to him by reason of any act of his without her "express written assent" thereto. It was never intended to deprive her of the full enjoyment of such personal property by interfering with its transfer by her own act if taken in good faith and of her own free will. The opinion of the majority of the court admits that she might thus dispose of her equitable sole and separate estate of this nature even to her husband; yet they declared she cannot do the like with such separate property as this statute vests in her. The dissenting judge says that the reason for such a distinction as well as the distinction itself is too delicate for him to discern notwithstanding the able efforts to point it out. The first part of the section should not be lost sight of entirely in so close a scrutiny of the proviso. The prime object of the former is to invest the wife with the title to such property and with its "sole control." The right to dispose of it by honest gift or otherwise as she may see fit is one of the most important and valuable incidents of complete title and control. She has the right to sue for it alone and should be conceded the enjoyment of all the benefits of legal ownership. All parts of the section should be given full force if possible. Limitations upon her rights as owner should not be extended by construction beyond the plain words of the law. In Georgia under a statute prohibiting a sale by the wife to her husband without the approval by order of court it was held that a gift by her to him was not within the inhibition. Cain v. Ligon, 71 Ga. 692. That decision well applied the principle just stated. The transfer of commercial paper to the husband in this case by the wife's regular indorsement in blank does not seem a reduction to possession by him within the meaning of the statute. The act which gave the transaction life and legal vigor was her act not his. As to such separate estate, her indorsement of a negotiable instrument should have the same force and be attended with like consequences as if she were single. The effect of the ruling of the majority of the court appears to the dissenting judge to limit both her rights and liabilities respecting such property to a compass too narrow to embrace the full intent and meaning of the law on the subject.

JETSAM AND FLOTSAM.

WHAT CONSTITUTES A VICE PRINCIPAL.—The Supreme Court, in O'Brien v. American Dredging Company, 53 N. J. L. (24 Vr.) 291, has defined the position of New Jersey on a mooted question in the law of master and servant. It is the question of what constitutes a vice principal, or how the line will be drawn "between the relation which will constitute an employee, the representative of his master, and that which will make him a fellow-workman with the others." On this the court says we are confronted with a variety of irreconcilable decisions evincing a positive opposition of views between courts administering the same system of laws. In one line of cases

the mere fact that one servant is endowed with a superior grade of service over others who are subordinate to him, is deemed to establish his position as a representative and vice principal of his master, (citing cases in Ohio, Illinois, Missouri, Michigan, Tennessee, and in the Supreme Court of the United States). On the other hand, there is a line of well-considered cases which repudiate this doctrine and hold that a servant employed as a foreman with other workmen is not, in respect to such employment, a vice principal, but only a fellow-workman, (referring to cases in Pennsylvania, New York, Massachusetts and England). Endeavoring, in the absence of authority in this State to find a rule consonant with the reason for denying the liability of a master for injuries to a servantby a fellow-servant, the conclusion of the court was that the fact of superiority in grade of service is not a conclusive test in determining the liability of the master. "That liability," said Mr. Justice Magie, "will arise when the negligent employee has been put in the place the master would otherwise occupy, but it will not arise when the negligent employee is a mere boss or foreman in the prosecution of the master's work, such as the master, if controlling and managing his own business, would necessarily employ, and such as a contracting workman would contemplate being employed." It was held that a company was not liable to a "deck hand" for injuries due to the negligence of the "captain" of a dredge. The rule suggested by Mr. Justice Van Syckel in Smith v. Oxford Iron Co., 42 N. J. L. (13 Vr.) 467, was approved, viz: "That to exempt the master, the servant to whose negligence the injury is to be attributed, need not be on a parity of service with the party injured, nor be engaged in the same particular work."—*New Jersey Law Journal.*

THE PROPOSED PENSION FOR THE FAMILY OF JUSTICE MILLER.—We are glad that the proposal for a pension for the family of the late Justice Samuel F. Miller is meeting with general approval among legal periodicals. A few weeks ago the CENTRAL LAW JOURNAL advocated the project editorially, quoting and indorsing the arguments which have been advanced in these columns. The editor of *The Albany Law Journal* in its current number adds some manly words to what he has previously said on the subject. It seems that a proposal has been made in St. Paul to start a private subscription for Mrs. Miller's benefit—"the same to be invested and used by her, either for the purpose of her own support or for the purpose of erecting a monument to the memory of her illustrious husband, or for both purposes, according to her own judgment and discretion." Mr. Oscar B. Hillis, clerk of the United States Circuit Court, St. Paul, Minnesota, has consented to receive such donations as may be offered, and to pay them monthly to Mrs. Miller. It is encouraging to find a growing interest in the matter, but we concur unreservedly in our Albany contemporary's disapproval of "passing around the hat." He says:

"This seems to us not the right way to accomplish this good object. The Government clearly owes the duty of providing for the great Judge's family, by pension. The matter should not be left to charity, however willing.

"Let our profession erect a monument to the great man, at their own cost, and let the Government provide for his family. That is the dignified and certain way of accomplishing the object. The Government owes the family a living, the profession owe the dead jurist a monument. This is the best way of making sure of both. Let the profession in every State petition the representatives in Congress to accord this simple and inexpensive act of justice, and it will be done. It is disgraceful that the widow and daughters should be left in poverty, when the nation is wallowing in wealth. This pension is as justly due as any pension to veterans of the war, for 'peace hath her victories no less renowned than war,' and Miller was foremost in winning many of them."

A petition signed by leading lawyers of this city, in addition to having great weight with Congress, would be influential in arousing the profession throughout the country to similar action. We think the movement might, with great propriety, originate with our City Bar Association.—*New York Law Journal.*

BOOK REVIEWS.

GLUCK AND BECKER'S RECEIVERS OF CORPORATIONS.

As the authors state, no attempt has been made in this volume to treat broadly of the subject of receivers. The treatise is strictly limited to the presentation of the law relating to a particular class, namely, the receivers of corporations, including those of national banks. Within this scope it is undoubtedly a work of value. We agree with the authors in their statement, that "a lawyer is not, as a rule, seriously in doubt concerning the general principles of a subject. His chief anxiety is to discover a precedent in which the general principles he urges have been clearly applied, and to find cases in which the facts involved so closely resemble those in the pending controversy that they relieve the mind of the court of any doubt and justify on its part a prompt and favorable decision. The mere citation in a foot-note of the titles of a large number of cases throws no light on such a quest. Much time and serious labor must thereafter necessarily be expended in ascertaining exactly what the facts and legal conclusions are in such cases."

It is plain to be seen from an examination of the foot-notes in this work, that the authors have made it their business to practically exemplify the point above noted; for the notes, instead of being mere digests of authorities, contain, at times and frequently, critical reviews of the cases. The book treats of the *status* of a receiver and the effect of his appointment upon corporate property, rights and liabilities. The questions as to when a receiver will and will not be appointed, and who may or may not be so appointed receiver, are interestingly discussed. There is a chapter on the jurisdiction and powers of various courts over receivers, and one upon the powers, rights and duties of receivers, including the receivers of national banks. The subject of limitations upon the powers of receivers, the liability of receivers, remedies against and compensation of receivers are treated fully as well as the removal and discharge of receivers. The text is written in first-class style and discusses the question presented upon principle as well as authority. In some cases the authors have boldly criticised the conclusions arrived at by various courts, but in each instance have given satisfactory reasons for their conclusions.

There is a good index and the mechanical preparation of the work is in every way without criticism. It is published by Banks & Brothers, New York and Albany.

STORY'S COMMENTARIES ON EQUITY PLEADINGS.

To undertake at this date to review a work so well known to the profession seems to be almost useless. The first edition made its appearance in 1838, and editions have been published from time to time, until it has now reached its tenth edition. If there is a practitioner in existence who does not know of the merits of this work, we should be much surprised. It has been since its first appearance and is to-day, the authority upon the subject of pleading in equity. The present editor is Mr. John M. Gould, a man thoroughly well qualified for the task undertaken. He states that in the present edition the aim has been, considering the increase of decisions in recent years, especially in the federal courts, to adapt this standard treatise to all the needs of modern practice, as well in the States which have a code procedure as in those having a distinct system of equity.

To the 2,600 cases cited in the last edition, about 1,900 have now been added. To those who are not familiar with the detailed contents of this exhaustive work, we will state succinctly what it contains. There are chapters on bills in equity, general nature and form, parties who have capacity to sue and be sued, proper parties to bills, the general frame of bills, bills of interpleader and *certiorari*, bills not praying relief, bills to perpetuate testimony and to take testimony *de bene esse* and bills of discovery, supplemental bills of revivor, cross-bills, bills of review and bills impeaching decrees. The author then treats of modes of defense, namely, demurrers, pleas and answers, demurrers to bills of relief, demurrers to bills of discovery, demurrers to bills not original, of the general nature and object of pleas, pleas to bills of relief, pleas to bills of discovery, pleas to bills not original, of the general nature and objects of answers, of replications and their consequences, of amendments and other incidents of pleading.

Were we to undertake to speak of the many points of merit in this great work we would find ourselves wandering from the necessary limits of a review; and in view of the high reputation which it has had for so many years, we deem it sufficient to say that the work of the editor has been dilligently and faithfully performed, and that the book is invaluable to the practitioner whose work brings him within the domain of equity jurisprudence.

The book is published in first-class style by Little Brown and Co., Boston.

BOOKS RECEIVED.

AMERICAN AND ENGLISH ENCYCLOPÆDIA OF LAW, Compiled under the Editorial Supervision of John Houston Merrill, Late Editor of the American and English Railroad Cases, and the American and English Corporation Cases. Vol. XVII. Northport, Long Island, N. Y.: Edward Thompson, Law Publisher. 1892.

A TREATISE ON THE LAW OF INSURANCE, Fire, Life, Accident, Marine, with a Selection of Leading Illustrative Cases, and an Appendix of Statutes and Forms. By George Richards of the New York Bar, Lecturer on Insurance Law in the School of Law of Columbia College. New York and Albany: Banks & Brothers, Law Publishers. 1892.

THE LAW OF FIRE INSURANCE, with an Analytical discussion of Recent Cases, by D. Ostrander, Chicago: Rollins Publishing Company, 161-163 La Salle Street. 1892.

THE GENERAL PRINCIPLES OF THE LAW OF EVIDENCE, with their Application to the Trial of Civil Actions at Common Law, in Equity and under the Codes of Civil Procedure of the Several States. In Two Volumes. An Appendix to Vol. II. Contains the Code Provisions of New York and California. By Frank S. Rice counselor at law. Volumes I and II. The Lawyers' Co-operative Publishing Co: Rochester, N. Y. 1892.

A TREATISE ON THE LAW RELATING TO PUBLIC OFFICERS AND SURETIES IN OFFICIAL BONDS, by Montgomery H. Throop. New York: The J. Y. Johnston Company, Law Book Publishers, 1892.

QUERIES.

QUERY NO. 4.

On the 14th day of May, 1890, A deeds a lot to B, and in the deed B assumes a mortgage of $2,000. On July 19th 1890, D obtains a judgment against A, which was a lien upon the aforesaid lot as far as the record shows, for B has never recorded his deed from A. On December 15th, 1891, B being disatisfied with his deed from A, on account of the clause which said that he was to assume the mortgage of $2,000 goes to A and has him make a new deed leaving out that clause, and B immediately records this new deed, which still leaves D's judgment a lien on said lot as far as the records go. B deeds the lot to E and E to F with the judgment against it. Now if D attempts to enforce his judgment lien against F would B be allowed to set up his first deed as between D and F. Give authorities. J. D. W.

QUERY NO. 5.

Z is owner of Blackacre. He gives a mortgage to A to secure $1,000, but A fails to record his mortgage Z gives another mortgage subsequently to giving A's, to secure same amount, to B, who has actual notice of A's mortgage. B records his, and of record it appears a first mortgage. Then Z executes a third mortgage to C, who has no notice of A's, and to secure same amount as A's, and has it (C's) recorded. B now forecloses and sells. How will the money be distributed, first, if land sells for $1,000 or less, second, if for $2.000 or less, and if for over $2,000 and for less than $3,000? Give authorities. H. J. J.

HUMORS OF THE LAW.

Herewith is a *verbatim* copy of the acknowledgment of a deed taken by a probate judge in Alabama a short while after he had been elevated, Cincinnatus-like, from the plough to office:

"The State of Alabama, }
St. Clair County. }

"I, A. W. Lacy, a subscribing witness to the within deed syned his name to the same in my presence and in the presence of the other witness, and that Thomas G. Brown syned his wife's name to the deed in my presence and in the presence of the other witness and State it was agreeable with his wife and I certify it was agreeable with his wife or she said it was before they made the deed, but when they made the deed she was not in a condition to syne the deed."

In the trial of an important land suit in the United States court at Dallas, Texas, in February, 1892, a

stenographer not accustomed to legal expressions, in taking down the opinion of the court, in which the expression "general grant of jurisdiction" was used, had it this way when his type-written copy was handed in: "Gen. Grant of jurisdiction."

Farmer Meddergrass—"Be you a lawyer, sir?"

Blackstone (with dignity)—"I am practicing law, sir."

Meddergrass (moving away)—"I thought mebbe you'd got the trade learned. I'll go to somebody else.

CURIOUS CORONER'S VERDICTS.

"That the deceased came to her death by childbirth against the peace and dignity of the State of South Carolina."

Another reported in this State is where a man was accidentally drowned, and when viewed by the jury and searched, on his person was found a pistol and $75. The object of the jury was evidently to get possession of this $75; so their verdict was: "Came to his death by carrying concealed weapons, and fined $75 for same."

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ACCOMMODATION INDORSERS. — A note given to plaintiff bank was signed by a corporation and defendants, and discounted at another bank by plaintiff, and paid by it at maturity by delivery of a certificate of deposit. A new note was then given to plaintiff, signed by the corporation and defendants. The defendants were not primarily liable on the debt, but were accommodation indorsers of the corporation, whose agents they were: *Held*, that they were liable to plaintiff on the renewal note.—*Capital City State Bank v. Des Moines Cotton Mill Co.*, Iowa, 51 N. W. Rep. 33.

2. ACCOUNTING—Evidence.—Where, in an action for an accounting the complainant, in stating the credits to which he was entitled, recites, among other items, a certain sum as a balance due on a certain date, according to an account rendered by the defendant, it is error for the master to assume that such sum was the proper balance between the parties on that date, since the statement merely constitutes an admission that said sum was the balance as shown by the defendant's account.—*Wilson v. Dowse*, Ill., 29 N. E. Rep. 727.

3. ADMINISTRATION — Claims against Decedent's Estate.—A husband invested his wife's money in land. She was dissatisfied with the purchase, and he took a conveyance of it, promising to pay her the value of the property, but failed to do so. She died subsequent to his death: *Held*, that a claim by her executors against the estate of her husband for the value of the land was valid.—*In re Lazarus' Estate*, Penn., 23 Atl. Rep. 372.

4. ADMIRALTY - Salvage. — Although the amount of salvage rests in the discretion of the court awarding it, an appellate court may reduce the award, if in making it there was a clear and palpable mistake, or violation of just principles, or a departure from the path of authority.—*The Bay of Naples*, U. S. C. C. of App., 48 Fed. Rep. 737.

5. ADVERSE POSSESSION.—To entitle a party to claim by adverse possession he must have made an actual entry upon the lands and occupied the same as owner. This occupancy, however, may be continued by his agents and servants.—*Omaha & Florence Land & Trust Co. v. Parker*, Neb., 51 N. W. Rep. 139.

6. ADVERSE POSSESSION — Evidence. — The owner of land, through which a public highway was opened, built a fence across the line, but placed a gate at the entrance of the road, and acknowledged that he did not cultivate the land up to the line because there was a public road there, and for 13 years there was travel on the highway without objection by such owner: *Held*, that a claim of adverse possession by him was not justified.—*Hempsted v. Huffman*, Iowa, 51 N. W. Rep. 17.

7. ADVERSE POSSESSION — Married Woman.—Adverse possession under a registered deed of a married woman is, with or without privy examination, and disregarding infancy or coverture, a bar to any suit by the wife, or those claiming through her.—*Shields v. Riverside Imp. Co.*, Tenn., 18 S. W. Rep. 258.

8. ADVERSE POSSESSION—Railroad Right of Way.— A railroad company which enters on another's land as a trespasser, and constructs and operates its road thereon, cannot acquire title to the fee by adverse possession, since its possession and claim is only of an easement for its right of way.—*Texas W. Ry. v. Wilson*, Tex., 18 S. W. Rep. 825.

9. ALTERATION OF NOTE—Discharge of Surety—Ratification.—The surety of a promissory note, having a right to insist upon his discharge because of a material alteration of the note by the addition, without his consent, of the signature of a new surety, may renew his liability without any new consideration by consenting to the alteration with full knowledge of all the facts.—*Owens v. Tague*, Ind., 29 N. E. Rep. 784.

10. ANIMALS—Dogs—Evidence of Viciousness.—Where the evidence showed that the dog was kept chained, that when at large he had been known to attack people, and that defendant had said he was afraid the dog would break loose and hurt some one, the question as to the dog's ferocious disposition and the defendant's knowledge thereof was for the jury.—*Robinson v. Marino*, Wash., 28 Pac. Rep. 752.

11. ANIMALS—Vicious Animals — Public Officers.—The directors of an almhouse are not liable for damages occasioned by a dog kept by the steward upon the premises, and left there after his removal from the county farm, there being no evidence that the directors authorized or acquiesced in the animal's presence.—*Sproat v. Directors of Poor, Etc., of Greene County*, Penn., 23 Atl. Rep. 380.

12. APPEAL — Costs.—Where counsel has opportunity to present his views orally to the court, but for his own convenience is permitted to reduce his argument to writing, the expense of printing such argument cannot be considered as costs in the case.—*State v. Friedrich*, Wash., 28 Pac. Rep. 747.

13. APPEAL — Equitable Action.—The supreme court will not consider an appeal in an equitable action unless the whole evidence is set out in the statement of facts, as required by Laws 1891, p. 347, § 22.—*Stenger v. Roeder*, Wash., 28 Pac. Rep. 748.

14. APPEAL — Jurisdictional Amount. — When, in an action at law, plaintiff recovers judgment, but it appears that, if defendant's theory of the transaction giving rise to the claim had been sustained by the jury, he would have been entitled to recover the amount of a counter-claim made by him, the amount in controversy on appeal is to be ascertained by adding to the judgment the amount of the counter-claim.—*Clark v. Sidway*, U. S. S. C., 12 S. C. Rep. 327.

15. APPEAL—Waiver—Demurrer to Evidence.—Where a defendant's motion to exclude the plaintiff's evidence, made as soon as plaintiff rests, is overruled, and he fails to stand by such motion, or to renew it after all the testimony is in, or to request that the jury be instructed to find for the defendant, but introduces testimony to contradict the plaintiff's case, and requests that the jury be instructed to determine the issues according to the preponderance of evidence, he is estopped from assigning as error the action of the court in overruling his motion.—*Joliet, A. & N. Ry. Co. v. Velie*, Ill., 29 N. E. Rep. 706.

16. ARBITRATION AND AWARD.—On motion of one of the parties to an arbitration to vacate the award, the court below, concluding that the submission to arbitration was not a statutory submission, refused to entertain the motion and ordered the judgment entered, and all proceedings under it to be perpetually stayed: *Held*, that the ruling was proper, it appearing that the judgment on the award was void.—*In re Kriess*, Cal., 28 Pac. Rep. 806.

17. ASSIGNMENT FOR THE BENEFIT OF CREDITORS.—On the refusal of the assignee for benefit of creditors to sue to set aside, as fraudulent, judgments confessed by the assignor in contemplation of a general assignment, the general creditors may sue for that purpose.—*Spellman v. Freedman*, N. Y., 29 N. E. Rep. 765.

18. ASSUMPSIT—Evidence.—As a written guaranty is not required to be under seal by the common law, which prevails in New Mexico, such an instrument is not converted into a specialty by the addition of a scroll, with the word "Seal" written therein, under Comp. Laws 1884, § 2742, which provides that, "on all documents in writing requiring a seal in this territory, a scroll may be used instead of a seal," etc.; and such instrument is admissible in evidence in an action of *assumpsit* founded thereon.—*Excelsior Manuf'g Co. v. Wheelock*, N. Mex., 28 Pac. Rep. 772.

19. ASSUMPSIT—Vendor and Vendee.—A purchaser of real estate is not estopped from rescinding the contract, and recovering the purchase money paid, on the ground of defect in the vendor's title, by having failed to examine the records in the recorder's office in the place where the transaction was had, before consummating the purchase, although such examination would have disclosed the imperfection in the title.—*Daly v. Bernstein*, N. Mex., 28 Pac. Rep. 764.

20. ATTACHMENT — Dissolution.—An attachment will not be set aside as against subsequent attaching creditors, who intervene, because the grounds stated in the affidavit for the prior attachment were false, if the prior attaching creditor believed them to be true, and had probable ground for the belief.—*Orr & Lindsley Shoe Co. v. Harris*, Tex., 18 S. W. Rep. 808.

21. ATTACHMENT—Grounds.—A creditor sued out an attachment on the ground that the debtor was about to dispose of his property with fraudulent intent to cheat his creditors. A few hours after the attachment was issued, the debtor confessed judgment in favor of some of her creditors. The judge decided that the cause stated for the attachment was not proved, and dissolved the attachment: *Held*, that the finding, having some evidence to support it, should not be set aside, although the fraudulent disposition of the debtor's property would have been sufficient to sustain the attachment had the attaching creditor amended his affidavit so as to charge that the defendant had disposed of her property with fraudulent intent.—*Blass v. Lee*, Ark., 18 S. W. Rep. 186.

22. ATTACHMENT — Mitigation of Damages.—It is no defense to an action on an attachment bond, where the attachment was dismissed because the affidavit was defective, that defendants had good grounds for suing out the attachment.—*Lobenstein v. Hymson*, Tenn., 18 S. W. Rep. 250.

23. ATTORNEY'S LIEN — Judgment.—An attorney can enforce his lien upon a judgment rendered in favor of his client only by giving the notice required by Code, § 215; and therefore, when the judgment is assigned before such notice is given, he has no lien thereon.—*Jennings v. Bacon*, Iowa, 51 N. W. Rep. 15.

24. BANKS—Collections—Acceptance of Draft.—In the absence of instructions, the collecting agent was authorized to infer that the ware house receipts were annexed to the draft to secure its acceptance, and were to be surrendered on acceptance.—*Moore v. Louisiana Nat. Bank*, La., 10 South. Rep. 407.

25. BILL OF EXCEPTIONS.—Though Code Civil Proc. § 653, authorizes a judge to sign and settle a bill of exceptions after as well as before he ceases to be judge, yet, under section 1085, which provides that a writ of mandate may issue to compel the performance of an act which the law enjoins as a duty, such writ will not lie to compel a judge before whom an action has been tried to settled a bill of exceptions after his term of office has expired.—*Leach v. Aitken*, Cal., 28 Pac. Rep. 777.

26. BILL OF EXCEPTIONS—Time of Filing.—Where, by agreement of parties, appellant was to have 60 days from March 17th in which to file a bill of exceptions, and it appears that said bill was filed May 17th, it is too late.—*McCord v. Rafferty*, Iowa, 51 N. W. Rep. 24.

27. CARRIERS—Ejection of Passengers.—Where a conductor ejects a passenger from a street-car, and, in reply to an inquiry by a policeman, states that the passenger was disorderly, and the latter is then unlawfully taken into custody by the policeman, and it is not shown that it was within the scope of the conductor's authority to cause the passenger's arrest, the carrier is not liable therefor.—*Cunningham v. Seattle Electric Railway & Power Co.*, Wash., 28 Pac. Rep. 745.

28. CARRIERS—Ejection of Passengers—Rules of Companies.—Passengers are not presumed to know the regulations of railroad companies made for the guidance of conductors of trains in relation to stop-over privileges, and unless the passenger has actual knowledge thereof, or the face of his ticket shows the rule requiring a stop-over check, he is entitled to rely upon the representation of the ticket seller as to what is neces

sary to entitle him to such privilege.—*New York, etc. R. Co. v. Winter's Adm'r*, U. S. S. C., 12 S. C. Rep. 356.

29. CARRIERS—Moving Street-car — Negligence.—It is not, as a matter of law, held to be negligence for a passenger to attempt to enter a street car while the same is moving, irrespective of the rate of speed or other qualifying circumstances. It is presumptively negligent to do so if this car is moving at its ordinary rate of speed, or with accelerated speed, and especially if the attempt is made between cars, or at the front instead of the rear of a car. It is ordinarily a question for the jury depending upon the circumstances of each case.—*Sahlgaard v. St. Paul City Ry. Co.*, Minn., 51 N. W. Rep. 111.

30. CARRIERS—Passengers—Conditions of Ticket.—In consideration of issuing a round-trip ticket at a reduced rate, the carrier may insert as a condition of the ticket that it shall not be good for a return passage unless the ticket holder shall identify himself as the original purchaser to the satisfaction of the carrier's agent at the point of destination, and unless the ticket is signed and stamped by said agent.—*Abram v. Gulf, C. & S. F. Ry. Co.*, Tex., 18 S. W. Rep. 321.

31. CARRIERS OF GOODS — Live-stock Shipment.—A contract for the shipment of live stock, wherein the shipper stipulates that he has examined the car, and accepts it as suitable and sufficient, does not estop him from recovering for injuries to an animal caused by a defect in the car, since a carrier cannot limit its common law liability so as to exempt itself from the consequence of its own negligence in furnishing an unsafe vehicle.—*Louisville & N. R. Co. v. Dies*, Tenn., 18 S. W. Rep. 266.

32. CONFLICT OF LAWS—Statute of Frauds.—A parol agreement, made in Illinois, to lease land situated therein for the term of a year, to begin at some definite future time, being within the Illinois statute of frauds, cannot be enforced in Indiana, although it is not repugnant to the statute of the latter State, as the law of Illinois governs.—*Cochran v. Ward*, Ind., 29 N. E. Rep. 795.

33. CONSTITUTIONAL LAW — Class Legislation. — Subjects of legislation may be classified under the constitution, but such classification must not be arbitrarily made. A statute must treat alike all of the class to which it applies, and must bring within its classification all who are similarly situated or under the same conditions.—*State v. Sheriff of Ramsey County*, Minn., 51 N. W. Rep. 112.

34. CONSTITUTIONAL LAW—Impounding Animals.—An ordinance providing for the impounding and sale of animals running at large in a city, under the authority given by Rev. St. art. 400, is not unconstitutional, as depriving the owner of the animal of his property without due process of law.—*Coyle v. McNabb*, Tex., 18 S. W. Rep. 198.

35. CONSTITUTIONAL LAW — Interstate Commerce—Tugs.—Tug-boats licensed by the United States for the coasting trade, and employed in towing vessels engaged in interstate commerce in and out of the Chicago river, are engaged in interstate commerce, though their operations are in fact confined largely to the corporate limits of the city of Chicago. The navigation of the river having been improved by the city at its own expense, a city ordinance prohibiting the use of such tugboats except under license from the city is valid, as being the imposition of a toll for the use of the river in its improved condition.—*Harmon v. City of Chicago*, Ill., 29 N. E. Rep. 732.

36. CONSTITUTIONAL LAW—Obligation of Contracts—Exemption from Taxation.—Act Ky. Feb. 14, 1856, declaring that all charters and grants to corporations and all other statutes shall be subject to amendment or repeal, unless a contrary intent be therein plainly expressed, is to be read into all charters afterwards granted; and hence the repeal of a subsequent special act, not expressly irrepealable, exempting the property of a water company from taxation, was not a violation of the contract, or of any rights acquired by the company thereunder.—*Louisville Water Co. v. Clark*, U. S. S. C., 12 S. C. Rep. 346.

37. CONSTITUTIONAL LAW—Sentence on Conviction.—Laws 1891, p. 272, *held ex post facto* as regards prisoners awaiting execution, because imposing greater punishments by the confinement in the State's prison than the acts repealed.—*People v. McNulty*, Cal., 28 Pac. Rep. 816.

38. CONTEMPT—Filing Evidence.—The testimony in a contempt proceeding was taken by the official shorthand reporter and ordered to be written out and filed with the clerk the same day. Judgment was then rendered against defendant. The notes written out were taken to the clerk's office about two hours after order of punishment was made. The clerk was absent and the evidence was left on his desk, and marked "Filed" by him the next morning: *Held*, a sufficient compliance with Code, § 3497, providing that, where the action is founded on the evidence of others, it must be in writing and filed.—*Small v. Wakefield*, Iowa, 51 N. W. Rep. 35.

39. CONTRACT—Sale of Patent Medicine—Damages.—Where one advertises and sells a proprietary article in a specified territory in violation of a contract the other party cannot recover as damages any moneys spent by him in advertising for the purpose of counteracting the effect thereof, since he might, in the first instance, have resorted to the courts for the protection of his rights.—*Fowle v. Park*, U. S. C. C. (Ohio), 48 Fed. Rep. 789.

40. CORPORATIONS—Elections.—An "appointment" by the board of directors of a corporation is not an "election" by the corporation within the Civil Code, § 315, authorizing the district court to inquire into "any election held by any corporate body" on the application of any person aggrieved by such election.—*Wickersham v. Brittan*, Cal., 28 Pac. Rep. 792.

41. CORPORATIONS—Elections.—In an action to determine the right of defendant to continue to act as a director of a corporation, after his resignation has been accepted, and plaintiff regularly appointed by the board of directors to fill the vacancy, plaintiff is not a "person aggrieved by any election," within Civil Code, § 315, providing that on the application of any "person aggrieved by any election held by any corporate body" the district court must inquire into such election.—*Wickersham v. Murphy*, Cal., 28 Pac. Rep. 793.

42. CORPORATIONS — Liabilities of Directors—Limitations.—An action by a creditor of an insolvent corporation against its directors to enforce the liability created by section 142, ch. 34, Gen. St. 1878, is governed by that clause of the statute of limitations which prescribes three years as the period of limitation in respect to actions upon "a statute for a penalty or forfeiture, where the action is given to the party aggrieved," etc.—*Merchants' Nat. Bank of Chicago v. Northwestern Manuf'g & Car Co.*, Minn., 51 N. W. Rep. 117.

43. CORPORATIONS—Officers — Salary.—An officer of a corporation, in order to recover compensation for his services must show that he is an officer *de jure*.—*Waterman v. Chicago & I. R. Co.*, Ill., 29 N. E. Rep. 689.

44. CORPORATION—Stock—Purchase by Officer.—A purchase of stock from a stockholder at a low price, by an officer of the corporation, is not fraudulent because such officer had knowledge in his official capacity of favorable sales of other stock, which enhanced the value of the stock generally, and of which fact the seller was ignorant.—*Crowell v. Jackson*, N. J., 23 Atl. Rep. 426.

45. CORPORATION—Stockholders.—While the affairs of an insolvent corporation are in the hands of a receiver, a creditor may not maintain an action in his own behalf against a stockholder to recover for stock held by the latter, but never paid for.—*Merchants' Nat. Bank of Chicago v. Northwestern Manuf'g & Car Co.*, Minn., 51 N. W. Rep. 119.

46. COUNTIES—Implied Contract—Employment of Attorney.—In order to bind a county on an implied contract to pay for services rendered by attorneys in a suit

against the county, it must appear that the board of supervisors, acting officially, knew that plaintiffs were performing services in the suit, expecting compensation therefor, and that the board permitted plaintiffs to proceed without objection. The fact that some or all of the members had such knowledge obtained from sources outside the board would not be sufficient to bind the county.—*Fouke v. Jackson County*, Iowa, 51 N. W. Rep. 71.

47. COUNTY JAIL — Expenses. — Under Rev. St. § 6115, which provides, "There shall be established and kept in their county, by authority of the board of county commissioners, and at the expense of the county, a prison for the safe-keeping of prisoners lawfully committed," where a steam heating apparatus is placed in a jail, which for its operation requires a skilled engineer, such engineer, though employed by the sheriff, should be paid by the county outside of the sheriff's compensation.—*Board of Com'rs of Vigo County v. Weeks*, Ind., 29 N. E. Rep. 776.

48. COUNTY SEAT—Court-House.—By a lawful election, it was decided to remove a county-seat to the town of P, and a deed for certain land therein for a court-house was delivered to the county, and P was thereupon declared to be the permanent county seat: *Held*, that the county court had jurisdiction to order court to be held in another place in the town of P until a court-house should be built on the land conveyed.—*Hudspeth v. State*, Ark., 18 S. W. Rep. 183.

49. COURT — Adjournment. — A term of the district court may be adjourned for 16 days, even though during the interval the judge of said court holds a regular term of court in another county.—*In re Hunter's Estate*, Iowa, 51 N. W. Rep. 20.

50. COURT—Death of Chief Justice.—Under Const. art. 4, § 2, providing that the supreme court shall consist of a chief justice and two associate justices, "any two of whom shall constitute a quorum," when the chief justice is dead, the two associate justices constitute a quorum of the court, and are competent to exercise its powers. — *C. Aultman & Co. v. Utsey*, S. Car., 14 S. E. Rep. 351.

51. COURTS—Judge— Disqualification.—The objection that a judge is disqualified to try an action to enforce a claim against an alleged insolvent corporation, because he is also a creditor of defendants, is groundless, where, before judgment, the debt owing by defendants to the judge is paid or transferred without recourse.—*Nicholson v. Snowalter*, Tex., 18 S. W. Rep. 326.

52. COVENANT— Breach. —An adverse interest paramount to that of the covenantor, and rightful possession thereunder, excluding the grantee, may constitute a breach both of the covenant for quiet enjoyment and of freedom from incumbrances; and, upon such a case being shown, a plaintiff suing for breach of covenant is not required to elect upon which covenant he will seek a recovery. — *Bruns v. Schreiber*, Minn., 51 N. W. Rep. 120.

53. CRIMINAL EVIDENCE — Homicide—Declarations. — Res Gestæ. — Where the fatal affray occurred at 11 o'clock at night, and defendant immediately rode rapidly to his home, about a mile away, and, on arriving, within 10 minutes, at his mother's room, was weak and sick, and covered with blood, still profusely flowing from a wound on the side of his head, his declaration as to the killing, made to his mother while she was dressing his wound, were admissible, as part of the *res gestæ*, to corroborate his testimony.—*Craig v. State*, Tex., 18 S. W. Rep. 297.

54. CRIMINAL EVIDENCE — Receiving Stolen Goods. — On a trial for receiving stolen goods, the admissions of the thief, not made in defendant's presence, are inadmissible in the absence of testimony, other than that of the witness, that the defendant had conspired with the latter to commit the crime. — *Dye v. State*, Ind., 29 N. E. Rep. 771.

55. CRIMINAL EVIDENCE— Second Trial—Admission of Stenographer's Notes. — On the second trial of a criminal case the testimony of a deceased witness, as taken by the stenographer at the former trial, may be received in evidence on behalf of the prosecution.—*Jackson v. State*, Wis., 51 N. W. Rep. 89.

56. CRIMINAL LAW—Appeal—Reversible Error.—Under Manst. Dig. § 2454, which provides that a conviction of a felony "shall be reversed only for an error to defendant's prejudice appearing on the record," it is no ground for reversal that the record fails to show that a plea was entered by defendant, where the trial was had, without objection, as under a plea of not guilty.—*Hayden v. State*, Ark., 18 S. W. Rep. 239.

57. CRIMINAL LAW—False Weights.—A conviction under Rev. St. § 2202, which provides that "whoever knowingly sells and delivers any coal, except at the weight and measure prescribed by law shall be fined," etc., cannot be sustained where the evidence shows that the coal issued without the State was sold at 72 pounds to the bushel instead of 80 pounds, as prescribed by law, to a person who knew the weight per bushel he was getting, and was not deceived.—*Blanchard v. State*, Ind., 29 N.E. Rep. 783.

58. CRIMINAL LAW—Homicide. — An objection that an instruction as to reasonable doubt, given by the court on its own motion in a murder trial, "would exclude from the consideration of the jury a doubt founded upon a knowledge of natural laws inconsistent with the hypothesis contended for by the prosecution," is not available, where defendant made no request to charge, and it does not appear from the record that the prosecution intended for any hypothesis claimed to be inconsistent with any natural law, or that evidence of any natural law would have been relevant or material. —*People v. Donguli*, Cal., 28 Pac. Rep. 782.

59. CRIMINAL LAW — Homicide — Insanity.—The testimony of a physician that he examined defendant on trial for murder a day or two after the killing, and found him mentally deranged, is competent to be considered in connection with acts before or at the time of the killing, which tend to establish insanity. — *Murphy v. Com.*, Ky., 18 S. W. Rep. 163.

60. CRIMINAL LAW — Instructions. — It is error to instruct the jury that in determining the credibility of defendant's testimony they have a right to take into consideration his demeanor and conduct during the trial.—*Purdy v. People*, Ill., 29 N. E. Rep. 706.

61. CRIMINAL LAW—Malicious Mischief.—On an indictment for willfully and wantonly wounding a cow, it is error for the court to refuse to give special instructions requested by defendant, defining the terms "willfully" and "wantonly." —*Brouder v. State*, Tex., 18 S. W. Rep. 196.

62. CRIMINAL LAW—Perjury.—A person claiming compensation for the value of sheep killed by dogs, who makes a false and corrupt affidavit to his claim before a township trustee, cannot be prosecuted for perjury under Rev. St. § 2006, defining that offense, but must be prosecuted under the laws providing a specific punishment for any person making such false statement.—*State v. Runyan*, Ind., 29 N. E. Rep. 779.

63. CRIMINAL LAW — Solicitation to Murder. — The solicitation to commit murder, accompanied by the offer of money for that purpose, is an offense at common law. — *Commonwealth v. Randolph*, Pa., 23 Atl. Rep. 988.

64. CRIMINAL PRACTICE— Embezzlement.—Code 1881, § 835, providing that if any person to whom any money or other property is intrusted for hire shall embezzle the same, he shall be deemed guilty of larceny, and on conviction thereof be imprisoned in the penitentiary not more than ten years nor less than one year, or in the county jail not exceeding one year, does not allow different grades of the offense, as for grand and petty larceny; and a person who embezzles property, under the circumstances named, is guilty whether the amount be great or small. — *State v. Weydeman*, Wash., 28 Pac. Rep. 749.

65. CRIMINAL PRACTICE — Larceny — Indictment.—An

indictment charging that defendant "unlawfully broke and entered" a store house, and, "with intent to steal," took and carried away the "dry goods, groceries, and money of said L. & Co. of the value of $100," etc., cannot be quashed on the ground that it does not define the felony intended to be committed.—*State v. Shelton*, Tenn., 18 S. W. Rep. 253.

66. CRIMINAL PRACTICE—Malicious Threats.—A written concession filed in the case by the county attorney, admitting that the threats charged in the indictment were not made in the presence of the prosecuting witness, will not be considered by the court, since it is incompetent to add to or explain the indictment by a paper which is no part of it, and which is not provided for by law.—*State v. Brownlee*, Iowa, 51 N. W. Rep. 25.

67. CRIMINAL TRIAL—Witness—Misconduct.—Where, on trial for the theft and illegal branding of an animal, all the witnesses were placed in custody of an officer, and two of the witnesses for the State, whose testimony established the identity of the animal, on their cross examination disclose that they had been talked to about the case by the chief deputy-sheriff, and the animal pointed out to them, it was error for the court not to exclude their testimony.—*Welhausen v. State*, Tex., 18 S. W. Rep. 300.

68. DEATH BY WRONGFUL ACT—Abatement.—Act 1851, ch. 17, as amended by Act 1871, ch. 78, provides that the right of action which a person who dies from injuries received would have had against the wrong-doer in case death had not ensued, shall not abate by his death, "but shall pass to his widow, and, in case there is no widow, to his children, or to his personal representatives, for the benefit of his widow or next of kin, free from the claims of creditors:" *Held* that, where deceased leaves no widow, child, or next of kin the right of action abates, and it does not lie for benefit of children, or, in absence thereof, for the benefit of the State.—*East Tennessee, V. & G. Rg. Co. v. Lilly*, Tenn., 18 S. W. Rep. 243.

69. DECEIT—Limitations.—An action for deceit in misrepresenting the number of acres in certain land sold to plaintiff is barred in two years, though plaintiff alleges that he did not know of such deceit until after that time, but he had taken no steps to ascertain the quantity of land conveyed, and defendant, in the mean time, had made no additional representations as to such quantity.—*Bass v. James*, Tex., 18 S. W. Rep. 336.

70. DEED—Rule in Shelley's Case.—A conveyance of land by a father to his daughter "and to the heirs of her body," vests in the daughter an absolute fee-simple, under the rule in Shelley's Case.—*Lane v. Utz*, Ind., 29 N. E. Rep. 772.

71. DEED—Undue Influence.—A trust-deed by one in weak mind and a dying condition, made principally for the benefit of one in whom the grantor had for many years imposed great confidence as her spiritual adviser, and for which there was no consideration, will be canceled on the ground of undue influence.—*Ross v. Conway*, Cal., 28 Pac. Rep. 785.

72. DEED—Unrecorded Deed—Bona Fide Purchaser.—When the title to real estate appears of record to have been in an intestate at the time of his decease, and thereafter the property has been conveyed by the heir at law to a *bona fide* purchaser for value, the latter acquires the title, as against a grantee named in an unrecorded deed executed by the intestate in his lifetime.—*Welch v. Ketcham*, Minn., 51 N. W. Rep. 113.

73. DIVORCE—Custody of Children.—Although a mother is naturally and presumptively entitled to the custody of minor children, especially girls of tender age, it is for the trial court to say upon all the evidence, in divorce, whether she is in fact more worthy of their custody than the father.—*Luck v. Luck*, Cal., 28 Pac. Rep. 787.

74. DIVORCE—Recrimination.—Recrimination, as a valid defense to a suit for a divorce, must arise out of the fact that the acts or conduct for which plaintiff seeks a divorce were induced by or in retaliation of plaintiff's conduct.—*Trigg v. Trigg*, Tex., 18 S. W. Rep. 313.

75. DRAINAGE—Assessment.—Under Rev. St. 1891, ch. 42, § 20, which provides that a jury impaneled to allow damages and assess benefits for a proposed ditch shall hear all objections to the assessment, and shall adjust such assessment so as to make it just and equitable, and section 24, *Id.*, which provides that on appeal to the county court the trial shall be conducted as in other cases of appeals from justices, the introduction of the assessment roll in evidence in the county court makes out a *prima facie* case in favor of its confirmation.—*Briggs v. Union Drainage Dist.*, Ill., 29 N. E. Rep. 721.

76. DYING DECLARATIONS—Contradictory Statements.—Statements made by deceased, contradicting his dying declarations, may be shown by defendant, although they were not made *in extremis*.—*Morelock v. State*, Tenn., 18 S. W. Rep. 258.

77. EASEMENT BY IMPLICATION.—Where a land-owner had for more than 20 years so used one parcel of his land as to have fastened upon it an easement of way if it had belonged to a different person, and such way was reasonably necessary to the enjoyment of the other parcel, and after severance of the parcels, and for nearly 20 years, the way had been used, and was known to have existed for 18 years by the person who bought the servient parcel, an easement by implication will be deemed to exist, and the purchaser will be deemed to have bought with notice thereof.—*Rightsell v. Hale*, Tenn., 18 S. W. Rep. 245.

78. EJECTMENT—Statutory New Trial.—The Illinois statute, which gives one new trial as of right "within one year after a judgment, either upon default or verdict, in an action of ejectment," to the party against whom it is rendered, on payment of all costs (Rev. St. ch. 45, § 35), is applicable to an action of ejectment to recover lands in Illinois, removed to the federal court, even after judgment entered upon a mandate of the supreme court.—*Smale v. Mitchell*, U. S. S. C., 12 S. C. Rep. 353.

79. ELECTION DISTRICTS—Voting Precincts.—In section 52 of the supplement to the act to regulate elections, approved May 28, 1890, the terms "election district" and "voting precinct" are synonymous, and denote the territory within which there is a single polling place for all the resident voters.—*In re Swain*, N. J., 23 Atl. Rep. 421.

80. EMINENT DOMAIN—Judgment.—Under the Illinois bill of rights, and the eminent domain act passed in pursuance thereof, when the issue in condemnation proceedings is simply as to the damages resulting to a particular tract claimed by one whose ownership is in no way challenged, and who offers no evidence as to the nature or extent of his interest, the judgment should secure to him personally the entire damages awarded, and an order directing the same to be paid to the county treasurer "for the benefit of the owners and parties interested" in the lands is erroneous.—*Convers v. Atchison, T. & S. F. R. Co.*, U. S. S. C., 12 S. C. Rep. 351.

81. EMINENT DOMAIN—Opening Street Across Railway.—A grant of authority to a city to appropriate lands for the purpose of a street will authorize the construction of a street across a railway.—*Lake Erie & W. R. Co. v. City of Kokomo*, Ind., 29 N. E. Rep. 780.

82. EQUITY PLEADING—Multifariousness.—A bill by the receiver of a bank against two other banks, and against two persons, each of whom is a managing officer in both defendant banks, to cancel certain certificates of indebtedness, and obtain the return of certain notes held as collateral security therefor, on the ground that all these securities were obtained in pursuance of a single fraudulent scheme, is not multifarious by reason of the fact that the interest of each defendant bank in the part of the securities held by it is separate from that of the other.—*First Nat. Bank of Alma, Kan. v. Moore*, U. S. C. C., (Ohio), 48 Fed. Rep. 799.

83. EQUITY—Decree.—Where the prayer of a bill is for a decree directing the defendant to remove a building

from a private alley, and to locate it at some particular point on the defendant's land, but the allegations of the bill merely show a right to have the building removed from the alley, a remanding order, which directs the lower court to enter a decree in accordance with said prayer, is too broad, even though the evidence sustains the allegations of the bill.—*Van Wert v. Boyes*, Ill., 29 N. E. Rep. 710.

84. EQUITY — Foreclosure — Lien.—Rev. St. ch. 22, § 44, which declares that a chancery decree for money shall be a lien on land to the same extent and under the same limitations as a judgment at law, does not apply to a decree which determines the amount due on a mortgage, and orders a sale of the mortgaged property in default of payment, but renders no personal judgment or decree against the mortgagor.—*Kirby v. Runals*, Ill., 29 N. E. Rep. 697.

85. EQUITY—Quieting Title.—In a suit to establish title, the bill alleged that complainant had bought the lot in question from one who had purchased it from defendant; that by mistake both deeds described another lot than the one intended; and that the lot intended to be conveyed was afterwards conveyed by defendant to a third person, and by him reconveyed to defendant: *Held*, that the person from whom complainant had bought the lot and the person to whom the defendant had afterwards conveyed it were both necessary parties to the suit.—*Dorman v. Brereton*, Ill., 29 N. E. Rep. 703.

86. ESTOPPEL—Assignment of Note.—Where the maker of a note, believing that the payee is the holder thereof, pays the latter without requiring the surrender of the note or inquiring whether it had been negotiated, and there is no evidence that the holder caused such belief, the holder is not estopped from showing that the payee was not authorized to receive payment of the note.—*Jenkins v. Shinn*, Ark., 18 S. W. Rep. 240.

87. ESTOPPEL — Partnership.—In an action on a note alleged to have been given by defendant firm, the answer denied the making of the note and alleged payment. Plaintiff's evidence showed that the note was given by one M, whom plaintiff claimed to be a member of the firm, and that the money was used by the firm. Defendants denied that he was a member or authorized to give the note: *Held*, that it was error to charge that, if the money was actually used by the firm, defendants were estopped to deny the authority of M to borrow the money.—*Eggleston v. Mason*, Iowa, 51 N. W. Rep. 1.

88. ESTOPPEL — Title.—One who has put another in possession of property, together with the muniments of title or *indicia* of ownership, will not be estopped from setting up title in himself as against a purchaser from the person so in possession, unless it is shown that the purchaser relied upon and was misled by the possession of the property and muniments of title.—*Stanton v. Esty Manuf'g Co.*, Mich., 51 N. W. Rep. 101.

89. EXECUTION—Amendment.—Where, after land has been sold under execution, there is found a discrepancy between the amount indorsed in the execution and the amount really due, such indorsement may be amended.—*Lane v. Potter*, N. J., 23 Atl. Rep. 420.

90. EXECUTION—Levy—Fraudulent Conveyances.—An agreement by a son to cultivate his father's farm and support the family, in consideration of the residue of the crops after feeding the stock, is valid, in the absence of extrinsic evidence of fraud; and such residue of a crop, raised by the son with the help of a hired hand, and the voluntary assistance of the father, cannot be subjected to the payment of the father's debts.—*Glasgow v. Turner*, Tenn., 18 S. W. Rep. 261.

91. EXECUTION — Levy—Life Estate.—As Laws 1849, p. 676, §§ 3, 4, provide for the subjection of a life estate to the lien of a judgment by sequestration of the rents and profits thereof, or by writ of *venditioni exponas*, after inquest by the sheriff or coroner as to the yearly value of the estate, a sale of such estate on a writ of *fieri facias*, being in contravention of the statute, is void, and a purchaser at such sale requires no title.—*Henry v. McClellan*, Penn., 23 Atl. Rep. 385.

92. EXECUTION SALE. — Where a joint judgment is rendered against two tenants in common of land the interest of each should be sold separately at the execution sale, so that each may redeem his own interest without redeeming that of the other; and a sale of the two undivided interests together is void.—*Ballard v. Scruggs*, Tenn., 18 S. W. Rep. 259.

93. EXECUTION SALE—Title of Purchaser.—A decree awarded to the plaintiff a specific sum of money, declared the amount of a lien on certain land, and directed that the land be sold in satisfaction thereof. A sale was made by a commissioner, in accordance with the decree, but the sale was never confirmed: *Held*, that the land might be sold under a general execution issued on such decree.—*Stotts v. Brookfield*, Ark., 18 S. W. Rep. 179.

94. EXECUTORS—Right to Sue.—An executor has capacity to institute and prosecute to judgment real actions for recovery, into the succession of the testator, of property in the hands of strangers, without joining his universal legatees as plaintiff; and for like purpose to sue for the partition of partnership property.—*Smith v. Sinnott*, La., 10 South. Rep. 413.

95. FEDERAL COURTS — Diverse Citizenship—National Banks.—Act Cong. March 3, 1887, as corrected by Act Aug. 13, 1888, declares in section 4 that national banks shall, for the purposes of all actions and suits in equity by or against them, be deemed citizens of the States in which they are located, and that in such cases the federal courts "shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State:" *Held*, that the provision quoted does not, when one of the parties is a national bank, take away the jurisdiction inhering in the federal courts by reason of diverse citizenship, but is merely intended to preserve such jurisdiction in cases in which both parties are citizens of the same State and a federal question is involved, or there are conflicting claims to land under grants of different States; thus placing national banks on precisely the same footing within dividuals or other corporations, with respect to the right to sue or be sued in the federal courts.—*Petri v. Commercial Nat. Bank of Chicago*, U. S. S. C., 12 S. C. Rep. 325.

96. FEDERAL COURTS — Jurisdiction — Amount in controversy.—The amount in dispute or the matter in controversy, which determines the jurisdiction of the circuit court in suits for the recovery of money only, is the amount demanded by plaintiff in good faith, and not amount of recovery. — *Peeler v. Lathrop*, U. S. C. C. of App., 48 Fed. Rep. 780.

97. FEDERAL COURTS — Jurisdiction — Removal of Causes.—When a cause has been removed from a State to a federal circuit court, and thence carried to the circuit court of appeals, the jurisdiction of the circuit court must appear affirmatively upon the record, otherwise the judgment will be reversed, with directions to remand to the State court. — *Southwestern Telegraph & Telephone Co. v. Robinson*, U. S. C. C. of App., 48 Fed. Rep. 769.

98. FINES — Effect of Pardon — Recovery. — When a penalty paid for the use of the county by one convicted of a crime was retained by the sheriff until after pardon, the penalty should be refunded, as not having vested in the county. — *Fischel v. Mills*, Ark., 18 S. W. Rep. 237.

99. FINES—Who Entitled to. — Where a county conducts a prosecution in a city police court under Gen. Laws, ch. 109, regulating the sale of liquor, and allowing to the complainant, in certain prosecutions, half the fine imposed, the county is not entitled to any part of such fine, under Gen. Laws, ch. 268, § 7, providing that all fines imposed by a police court shall belong to the city in which the court is held, when other provision is not specially made. — *Batchelder v. Rockingham County*, N. H., 23 Atl. Rep. 429.

100. FISHERIES—Planting Oysters.— Under Pen. Code, § 441, making it a misdemeanor for a non-resident to

plant oysters in the waters of the State without consent of the owners of the same, or of the shore, or to gather oysters from their beds in any such waters, either for his own benefit, or for that of a non-resident employer, an indictment of a non-resident, which fails to allege that he planted the oysters for his own benfit, or for that of a non-resident employer, is insufficient. —*People v. Lowndes*, N. Y., 29 N. E. Rep. 751.

101. FRAUDULENT CONVEYANCE— Intent—Preferences. —The law of this State allowing a debtor to prefer creditors, an agreement that such debtor shall execute a chattel mortgage upon his entire stock of goods, but reserving the right to withdraw a certain amount of such goods as to be turned over to another creditor in payment of a claim conceded to be just, is not fraudulent as against other creditors, and a chattel mortgage executed and delivered under such an agreement is not thereby rendered fraudulent.—*First Nat. Bank v. North*, S. Dak., 51 N. W. Rep. 96.

102. FRAUDULENT CONVEYANCES — Resulting Trust.— A non-resident debtor having paid the consideration for the purchase of real property in this State, and having fraudulently procured the property to be conveyed to another, and having no property within this State, a resident creditor may enforce against such real estate the resulting trust declared by statute, without first having procured and sought to enforce a personal judgment against the non-resident debtor. — *Overmire v. Haworth*, Minn., 51 N. W. Rep. 121.

103. GARNISHMENT.—Money in Possession of Sheriff.— Money in the possession of the sheriff, taken by him from a prisoner for safe-keeping, are not subject to garnishment. — *Richardson v. Anderson*, Tex., 18 S. W. Rep. 195.

104. GUARDIAN AND WARD — Appointment. — Under Code, §§ 2242 2246, which declare that where either parent dies the survivor shall be guardian of their minor children; that, if there be no parent or guardian qualified and competent, the district court shall appoint a guardian; and that, if a minor has property not derived from either parent, a guardian must be appointed, — the district court has power to appoint separate guardians of the person and the property of a minor.— *Lawrence v. Thomas*, Iowa, 51 N. W. Rep. 11.

105. HIGHWAY—Defective Construction.—Defendants, owning land on which was a turnpike road, by agreement or license from the turnpike company altered the grade of the road and removed a fence at the side thereof, so that the road was on a level with and 15 feet from a pond: *Held*, that defendants, by making such alterations, assumed the duty of the company, but they were not liable, by reason of the unfenced condition of the road, for injuries sustained by plaintiff from a horse driven by him becoming frightened from some unknown cause while proceeding along the road at night and running into the pond. — *Horstick v. Dunkle*, Penn., 23 Atl. Rep. 378.

106. HOMESTEAD — Extent of Right. — Under Const. 1874, art. 9, §§ 3, 4, which provide that a "homestead outside of a city, town, or village, owned and occupied as a residence, shall consist of not exceeding 160 acres of land, with the improvements thereon, to be selected by the owner," one who owns and resides on a 40-acre tract of land cannot claim as part of his homestead a tract of 113 acres of non-contiguous land, lying a mile away from his residence, although the last-mentioned tract is used to supply wood for use in the owner's house.—*McCrosky v. Walker*, Ark., 18 S. W. Rep. 169.

107. HOMESTEAD — Judgment Lien. — A homestead right, which has never been abandoned, is not subject to the lien of a judgment on an obligation contracted after the homestead right attached. — *Ayres v. Griel*, Iowa, 51 N. W. Rep. 14.

108. HUSBAND AND WIFE — Alienating Wife's Affections.—The action for alienating a wife's affections is not based upon the loss of the wife's services, but upon the loss of the *consortium*. The loss of services is an element of damage in an action for alienation of a wife's affections, and such loss does not depend upon actual separation of the parties, but may be based upon the lessening in value or efficacy of her services, even though she continues to perform them.—*Adams v. Main*, Ind., 29 N. E. Rep. 792.

109. HUSBAND AND WIFE — Contracts— Divorce.—It is not against public policy for a wife, pending suit for divorce, to give her husband a writing acknowledging an indebtedness from herself to him, creating a lien on her land to secure the same, and promising to pay the debt on sale of the land, upon the condition that, if divorce is not decreed, the instrument shall be void.— *Nieukirk v. Nieukirk*, Iowa, 51 N. W. Rep. 10.

110. IMMIGRATION — Constitutionality of Restriction Act.—Act March 3, 1891, ch. 551, which provides for the exclusion from admission into the United States of certain classes of aliens, and that the decision by the inspectors of immigration adverse to the right of any alien to land shall be final and conclusive unless appeal is taken to the superintendent of immigration, whose action is subject to review by the secretary of the treasury, is a constitutional exercise of the power of congress.—*Nishimura Ekiu v. United States*, U. S. S. C., 12 S. C. Rep. 336.

111. INFANCY—Estoppel. — Where a married woman, who joined her husband in a deed of her land, was a mother, and appeared of full age, and the grantee believed she was of full age when he purchased, she is not estopped from showing her infancy, where she made no representations as to her age.—*Sewell v. Sewell*, Ky., 18 S. W. Rep. 162.

112. INHERITANCE TAX—Exemptions.—Purd. Dig. 2148, providing that "all estates" passing from any person who may die seised or possessed thereof "other than to or for the use of father, mother, husband, wife children, and lineal decendants," etc., shall be sucject to a tax, and that "no estate which may be valued at a less sum than $250 shall be subject to the duty or tax," does not exempt a collateral legacy for less than said amount, when decedent's entire estate is of greater greater value.—*In re Howell's Estate*, Pa., 23 Atl. 403.

113. INSANITY—Appointment of Guardian.—Failure to verify a petition for the appointment of a guardian of an insane person in conformity with Code, § 2272, does not make such petition a nullity when the court has jurisdiction of the person against whom the proceeding was instituted. — *Guthrie v. Guthrie*, Iowa, 51 N. W. Rep. 13.

114. INSURANCE—Authority of Agent.— An agreement between an insurance company and an agent recited that the latter agreed to devote his whole time to the service of the company, under instructions to be issued from time to time, indicated the territory in which he was to work, and specified the amount of his compensation. A document of later date gave him authority to receive applications for insurance under instructions from the company: *Held*, that he was not a general agent, and had no authority to waive a condition against incumbering property insured.—*Martin v. Farmers' Ins. Co. of Cedar Rapids*, Iowa, 51 N. W. Rep. 29.

115. INSURANCE — Conditions.—A policy contained an arbitration clause giving either party the right to demand this mode of adjustment in the event of a disagreement between them as to the amount of the loss. Each party was to select one arbitrator, and the two so chosen were to select an umpire: *Held*, that if, upon a demand by the assured for such an arbitration, the insurer in bad faith prevents or unreasonably postpones an arbitration, the latter is precluded from pleading in defense of an action, that there had been no arbitration.—*Powers Dry Goods Co. Imperial Fire Ins. Co. of London*, Minn., 51 N. W. Rep. 123.

116. INTERNAL REVENUE — Tax on Spirits.—Rev. St. § 3293, as amended by Act Cong. March 28, 1880, requires distillers to give a bond conditioned to pay the tax on spirits stored in distillery warehouses "before removal" therefrom, or within three years from the date

of the bond: *Held*, that the destruction of such spirits by fire, while in the warehouse does not constitute a "removal," so as to make the tax payable before the expiration of the three years. — *United States v. Peace*, U. S. C. C. (N. Car.), 48 Fed. Rep. 714.

117. INTOXICATING LIQUOR — Jurisdiction.—A petition to enjoin the sale of intoxicating liquor on an island in the Mississippi river, which fails to show that the island is within the Iowa boundary as fixed by act of congress, is demurrable for not showing jurisdiction. —*Buck v. Ellenbolt*, Iowa, 51 N. W. Rep. 22.

118. INTOXICATING LIQUOR — Nuisance — Parol Evidence. — In a proceeding under Code, § 1558, to have a judgment for the fine and costs of a prosecution for maintaining a liquor nuisance decreed a lien on the premises where the nuisance was maintained, the indictment and judgment of conviction, although they do not show on their face that the nuisance was kept on the premises sought to be charged, are admissible in evidence, and parol evidence is admissible to identify the place where the nuisance was actually kept.—*State v. Manatt*, Iowa, 51 N. W. Rep. 73.

119. JUDGMENT—Conveyance— Consideration.—A conveyance of land by a minor without consideration is void.—*Robinson v. Coulter*, Tenn., 18 S. W. Rep. 250.

120. JUDGMENT—Inconsistent Recitals— Presumption. —Where a judgment recites that the cause was tried on the papers and records on file, with statements made by the parties, and adds, "There being no evidence, the cause was thereupon submitted," etc., and judgment rendered for plaintiff, such apparent inconsistency does not rebut the presumption of the correctness of the judgment, it being as susceptible of a construction that will sustain the judgment as of a construction that will defeat it. — *Davis v. Lezinsky*, Cal., 28 Pac. Rep. 811.

121. JUDGMENT—Insufficient Findings.—A judgment is not void for want of a finding of fact to support it. While it is erroneous, and subject to reversal by proper proceedings brought for that purpose, yet the lack of such a finding is no cause for enjoining the collection of the judgment. — *Petelka v. Fitle*, Neb., 51 N. W. Rep. 131.

122. JUDGMENT — Subrogation. — Where a husband, wishing to save his wife's land from being sold to satisfy certain judgments, applied to his father-in-law for aid, who indorsed the husband's note for an amount sufficient to pay the judgments, with the distinct understanding that the money was to be used for no other purpose, and that the judgments were to be assigned to him as security for his liability on the paper, and the father-in-law afterwards paid the notes, his administrator after his death is entitled to be subrogated to the rights of the original creditors. — *Treadway v. Pharis' Adm'r*, Ky., 18 S. W. Rep. 225.

123. JUDGMENT — Want of Service. — In a suit to set aside a judgment by default for want of service of summons, the finding of service by the court will be presumed to be correct, and the burden is on plaintiff to show the contrary. — *Jamison v. Weaver*, Iowa, 51 N. W. Rep. 65.

124. JUDICIAL SALES — Jurisdiction of Court. — It has long been the settled jurisprudence of this court that a purchaser at a judicial sale is held bound to look to the jurisdiction of the court granting the order of sale, but the truth of the record concerning matters within its jurisdiction cannot be disputed; and it has been sanctioned in many recent cases, and must be adhered to as a rule of property. —*Successions of Theze*, La., 10 South. Rep. 412.

125. JUSTICE OF THE PEACE—Attachment.—The action of a justice of the peace in overruling a motion to discharge attached property under claim of exemption, is not reviewable by writ of error.—*Lease v. Franklin*, Iowa, 51 N. W. Rep. 21.

126. LANDLORD AND TENANT—Forcible Detainer.—The failure and refusal of a tenant to pay rent according to the terms of his lease when due, in the absence of a stipulation to the contrary, terminates the lease, and the tenant is liable to an action for forcible detention of the premises.—*Pollock v. Whipple*, Neb., 51 N. W. Rep. 130.

127. LANDLORD AND TENANT — Rent.—Where a tenant holds over after the expiration of his term, and pays the monthly rent provided in the lease, but afterwards induces the lessor to agree to a reduced rent, the provisions to the expired lease to remain in other respects the same, such an agreement is void for want of consideration. — *Goldsbrough v. Gable*, Ill., 29 N. E. Rep. 722.

128. LEASES — Forfeiture. —Under a lease of a farm, with the exclusive right to drill for oil and gas, providing that the lessee shall pay a certain yearly rental until a well shall be completed "and a failure to complete such well or to pay said rental, or within ten days thereof, shall render this lease null and void, and can only be renewed by mutual consent," the right to forfeit the lease for failure to complete the well or pay the rent is for the benefit of the lessor, and the legal effect of such words cannot be changed by evidence to show the uniform construction by similar clauses by the parties to oil leases. — *Jones v. Western Pennsylvania Gas Co.*, Pa., 23 Atl. Rep. 386.

129. LIMITATIONS — Costs. — A claim for costs against the successful party can not be attached to a judgment so as to be kept alive during the life of the judgment, and thereby suspend the limitation of section 2529 applicable to an ordinary account; and where a justice fails to issue a fee-bill for some years, during which time a transcript is filed in the district court, a motion issued for judgment for the costs will be denied.—*State Ins. Co. v. Griffin*, Iowa, 51 N. W. Rep. 63.

130. LIMITATION OF ACTION—Pleading.—An averment in a declaration that defendants fraudulently concealed the cause of action from plaintiff, not stating the facts constituting such concealment, is not sufficient to take the case out of the operation of the statute of limitations, and renders the declaration demurrable, even though it was not necessary for plaintiff to attempt to avoid the effect of the statute.—*Cottrell v. Tenney*, U. S. C. C. (Ill.), 48 Fed. Rep. 716.

131. MANDAMUS—Compensation of State Officers. —In the absence of any spacific appropriation by the legislature to pay for the services of a State agent, appointed under the provisions of chapter 176, Sess. Laws 1877, the supreme court will not compel by *mandamus* or otherwise the governor, auditor, and attorney general to enter into or execute any contract with such agent for his compensation.— *State v. Humphrey*, Kan., 28 Pac. Rep. 722.

132. MARRIAGE— Community Property.— A wife who, three weeks after marriage, deserts her husband, and in the same community forms an adulterous relationship with another, cannot — being in bad faith—maintain the *status* of a married woman.—*Succession of Llula*, La., 10 South. Rep. 406.

133. MARRIAGE— Estoppel. — A youth who, by falsely and fraudulently representing himself to be 19 years old, induced defendant to marry him, is not estopped by his fraud, in an action by him to annul the marriage, to show that he was under legal age, under Rev. St. §§ 2329, 2350, 2351, 2353, providing that a male party to a marriage, under 18 years of age, may, on the ground that he was under legal age, have the marriage annulled.— *Eliot v. Eliot*, Wis., 51 N. W. Rep. 81.

134. MARRIED WOMAN — Validity of Will.—Under Gen. St. ch. 52, art. 2, § 6, a paper executed by a married woman as a will, but not wholly written by her, and made before she is empowered by a competent court to dispose of her estate, is not valid unless subsequently reacknowledge and attested after her disability is removed.—*Gregory v. Oates*, Ky., 18 S. W. Rep. 231.

135. MASTER AND SERVANT — Dangerous Appliances— Promise to Repair.—The question whether a workman was guilty of negligence by continuing to use a defective machine for a reasonable time for his employer to make the needed repairs after his promise to do so

was for the jury. — *Weber Wagon Co. v. Kehl*, Ill., 29 N. E. Rep. 714.

136. MASTER AND SERVANT – Defective Appliances—Negligence of Vice-Principal. — Where defendants employed a carpenter to superintend the erection of the building, the testimony tending to show that such an employment included the preparation of the scaffolding, defendants were bound by any acts and omissions of such carpenter in the erection of the scaffolding.—*Haworth v. Seevers Manuf'g Co.*, Iowa, 51 N. W. Rep. 68.

137. MASTER AND SERVANT—Employment of Minor.—A contract employing a minor, which is signed by both the minor and her father, by which the father authorizes the minor to receive the wages due her, and which contains a stipulation as to forfeiture of wages in case the minor should leave without giving two weeks' notice, is a partial emancipation of the child; and the latter, after leaving her employment without the stipulated notice, cannot repudiate the contract on account of her infancy, and recover on a *quantum meruit*.—*Tennessee Manuf'g Co. v. James*, Tenn., 18 S. W. Rep. 262.

138. MASTER AND SERVANT — Negligence.—A railroad employee working in a bridge gang is a fellow-servant with workmen in the transportation department, although they have no duties in common, and are under the direction of independent superintendents.—*International & G. N. R. Co. v. Ryan*, Tex., 18 S. W. Rep. 219.

139. MASTER AND SERVANT — Negligence—Precaution after Accident.—In an action against a railway company for personal injuries to a switchman, while uncoupling moving cars, caused by his foot being caught between switch-rails at a place where the block between them was worn away by use, testimony that, within 24 hours after the accident, the defective block was replaced by a new one, is inadmissible to originate an inference or implied admission of negligence, and its admission is ground for reversal of a judgment for plaintiff.—*Alcorn v. Chicago & A. R. Co.*, Mo., 18 S. W. Rep. 188.

140. MASTER AND SERVANT—Risks of Employment.—A railroad laborer, riding on a hand car with three others, who injures his hand while assisting the others in lifting the car off the track to get it out of the way of an approaching train, cannot recover on the ground that the railroad company failed to furnish a sufficient number of men to handle the car, if its weight and number of men necessary to handle it were matters open and patent to common observation, since, in such a case, he assumed the risk as an incident of his employment.—*St. Louis, A. & T. Ry. Co. v. Lemon*, Tex., S. W. Rep. 331.

141. MEASURE OF DAMAGES—Failure to Deliver Stock.—Nominal damages will only be awarded for failure to deliver certain paid-up stock, which has not been issued, and which has no market or actual value, though it would have cost its par value to procure it, since the measure of damages is not the cost of procuring it, but the loss sustained by failure to receive it.—*Barnes v. Brown*, N. Y., 29 N. E. Rep. 760.

142. MECHANIC'S LIEN—Record—Notice.—Acts 1889, ch. 103, § 1, provides (1) for liens by journeymen, subcontractors, etc., and that notice shall be given the owner that the lien is claimed; (2) that the same shall have precedence over all other liens, provided a statement of the amount due shall be filed with the county register, etc.: *Held*, that registration is not necessary, as between the owner and the subcontractor or materialman. As to them, notice to the owner is all that is necessary to create a lien.—*Reeves v. Henderson*, Tenn., 8 S. W. Rep. 242.

143. MINES—Check Weighman—Intimidation.—A president of a mining company, who notifies the miners that he will shut down the mine unless the miners discharge the check weighman hired by them, does not violate Act March, 1887, providing for the appointment of a check weighman by miners, and that he shall not be "interfered with or intimidated by" the agent, owner, etc.—*State v. Jenkins*, Tenn., 18 S. W. Rep. 249.

144. MINES AND MINING.—After the location of a tunnel claim, a person discovering, within the surface boundaries thereof, a lode which crosses the line of the tunnel, will be restrained from prosecuting proceedings for a patent while the tunnel is duly worked, and until it is demonstrated that the lode will not be discovered in the tunnel.—*Hope Min. Co. of St. Louis v. Brown*, Mont., 28 Pac. Rep. 732.

145. MINING PARTNERSHIP—Rights of Co-owners.—In the absence of a special contract there is no relation of trusts between tenants in common of mining property, who are partners merely in the working thereof, which prevents one of them, when selling the property, from receiving a higher price for his interest than is paid the others.—*Harris v. Lloyd*, Mont., 28 Pac. Rep. 736.

146. MORTGAGES—Consideration.—A mortgage, given without consideration, and to protect the mortgagor against an anticipated judgment, although having no priority over a subsequent mortgage, is valid as between the parties.—*Risely v. Parker*, N. J., 23 Atl. Rep. 424.

147. MORTGAGES — "Equitable Title."—An equitable estate in land, is not the equivalent of an "equitable title" to lands; so that a person purchasing lands at a sale under execution, who has acquired an equitable estate therein by the failure of the parties in interest to redeem within a year, but who has not demanded and received a deed from the sheriff, is not entitled to redeem such lands as a person holding the "legal or equitable title" thereof (Rev. St. 1881, § 768), but must proceed to redeem as a judgment creditor or lienholder (section 772.)—*Robertson v. Vancleave*, Ind., 29 N. E. Rep. 781.

148. MORTGAGE—Foreclosure—Note.—Where a debtor gives a note and mortgage to secure one who promises to pay all his debts, the amount of which has not been definitely ascertained, the note is not presumptive evidence of the mortgage debt, but the mortgagee, in a suit to foreclose, must prove the amount of the mortgagor's debts paid by him.—*Turman v. Forrester*, Ark., 18 S. W. Rep. 167.

149. MORTGAGES—Purchase of Equity by Bondholders.—Where a company, having mortgaged property to secure its bonds, and having become insolvent, has a trustee appointed to settle its affairs, and the bondholders purchase the property from the trustee subject to the mortgage, they cannot then proceed to collect the bonds from the company, or from the individual members, for the reason that they have already received payment in the land.—*Cock v. Bailey*, Pa., 23 Atl. Rep. 370.

150. MUNICIPAL CORPORATIONS—Annexation of Territory.—Code Civil Proc. § 803, declares that an action may be brought by the attorney general in the name of the people against any "person" who usurps or unlawfully exercises any franchise. Pol. Code, § 17, declares that the word "person" shall include a corporation, as well as a natural person: *Held*, that a municipal corporation is a person, within the meaning of said section; and that, where such a corporation claims the right to govern and tax the inhabitants of territory other than that described in its charter, the right thus claimed is a franchise in addition to and distinct from that of being a corporation, and the exercise of such right is a usurpation, for which the attorney general is authorized to bring an action.—*People v. City of Oakland*, Cal., 28 Pac. Rep. 807.

151. MUNICIPAL CORPORATIONS—Defective Drains and Sewers.—Where a city grants permission to a person, and appropriates money to aid him, to alter, under the supervision of the city engineer, the course of a city over which it has assumed control, and such alteration is negligently made, so as to cause the water and excrement to back up and flow into a private cellar, the city is liable for the damages resulting therefrom.—*Chalkley v. City of Richmond*, Va., 14 S. E. Rep. 339.

152. MUNICIPAL CORPORATION—Defective Sidewalks.—In an action for injuries received by falling into a hole in a sidewalk, evidence as to the general condition of the sidewalk is admissible to show the knowledge of

the defect by the city.—*Smith v. City of Des Moines*, Iowa, 51 N. W. Rep. 77.

153. MUNICIPAL CORPORATION — Illegal Arrest by Policeman.—A complaint in a suit against a city which alleges that a policeman of the city arrested plaintiff for a supposed violation of a city ordinance, without a warrant, and without affidavit made as required by law; that plaintiff had not violated the ordinance; and that the policeman was incompetent, to the knowledge of the city—states no cause of action.—*Rusher v. City of Dallas*, Tex., 18 S. W. Rep. 333.

154. MUNICIPAL CORPORATIONS — Sewers.—A village may by ordinance provide for the construction of a sewer to extend beyond the territorial limits of the village. Shreve v. Town of Cicero, 21 N. E. Rep. 815, 129 Ill. 226, followed.—*Maywood Co. v. Village of Maywood*, Ill., 29 N. E. Rep. 707.

155. MUNICIPAL CORPORATIONS—Negligence of Officers. —Where one is confined in a city jail on a criminal charge, and is assaulted by other prisoners confined in the same room, he cannot hold the city liable for such assault, on the ground of the negligence of its officers in not taking proper measures to protect him.—*Davis v. Mayor, etc., of City of Knoxville*, Tenn., 18 S. W. Rep. 254.

156. MUNICIPAL CORPORATIONS — Nuisance.—Rev. St. ch. 38, § 221, which declares it to be a public nuisance to throw or deposit any offensive matter in any watercourse, or to corrupt the water of any stream, to the injury of others, does not render invalid a city ordinance providing for the construction of a sewer to empty into a neighboring river, where it appears that the pollution of the river water thereby would be very slight.—*Walker v. City of Aurora*, Ill., 29 N. E. Rep. 741.

157. MUNICIPAL CORPORATIONS — Ordinances.—Where an ordinance is passed and published in the mode prescribed by the city's charter, the fact that the city officials may have exceeded their authority in incurring a debt for its publication does not invalidate the ordinance.—*Kimble v. City of Peoria*, Ill., 29 N. E. Rep. 723.

158. MUNICIPAL IMPROVEMENTS—Pavements.—Where, in an action by a city against a cemetery company to recover the cost of repaving a street abutting the cemetery, the court charges the jury that the city could not recover unless the old pavement was a public nuisance, that is, "an inconvenience, an injury, and a damage to the public," it is proper to refuse to charge that the city could not recover unless the pavement was a "dangerous" public nuisance.—*City of Philadelphia v. Monument Cemetery Co.*, Pa., 23 Atl. Rep. 400.

159. MUNICIPAL TAXATION—Recovery of Assessments Paid.—Money paid under a street assessment, illegal, but not void for jurisdictional or constitutional reasons, cannot be recovered until the assessment is set aside.—*Trimmer v. City of Rochester*, N. Y., 29 N. E. Rep. 746.

160. MUTUAL BENEFIT INSURANCE—Change of Beneficiary.—The constitution of a lodge provided that any member might change his beneficiary by authorizing such change in writing on the back of his certificate in a prescribed form, attested by the recorder under the seal of the lodge, but that no change should be valid until it had been reported to the grand recorder, and the certificate filed with him, and he had issued a new certificate: *Held*, that a new certificate issued in conformity with such provision was valid, in the absence of fraud, although the recorder had signed and sealed the attestation without in fact witnessing the execution of the order to change the beneficiary.—*Simcoke v. Grand Lodge A. O. U. W. of Iowa*, Iowa, 51 N. W. Rep. 8.

161. MUTUAL BENEFIT INSURANCE — Membership—Initiation.—The constitution and by laws of the Knights of Honor, requiring an applicant for membership to be initiated in addition to paying his proposition fee and being elected, before acquiring any rights as a member, are reasonable, and not contrary to law, notwithstanding the ceremony of initiation is secret.—*Matkin v. Supreme Lodge Knights of Honor*, Tex., 18 S. W. Rep. 306.

162. NEGLIGENCE — Contributory Negligence. — Evidence *held* insufficient to justify a finding of negligence because of the defendant's failure to adopt and provide on its electric street-cars a "resistance coil," at a time when, so far as appears, no such device had been discovered or its practical utility demonstrated.—*Lorimer v. St. Paul City Ry. Co.*, Minn., 51 N. W. Rep. 125.

163. NEGLIGENCE—Street Railways—Collision.—Where a driver of a wagon reaches a street along which run electric cars, and drives directly on the tracks without stopping or looking for a car, and his wagon is at once struck by an approaching car and the horses injured, he is guilty of contributory negligence.—*Carson v. Federal St. & P. V. P. Ry. Co.*, Penn., 23 Atl. Rep. 369.

164. NEGOTIABLE INSTRUMENT—Failure of Consideration.—The consideration for which a negotiable promissory note was given was a jack, warranted by the seller to be a sure foal getter. In an action upon the note by an indorsee, who purchased the paper before due, in the ordinary course of business, for value, having knowledge of the contract of warranty, but neither he nor the makers of the note having any knowledge that the warranty had failed until long after the transfer of the paper, *held*, that the defense of breach of warranty was not available against the plaintiff.—*Rublee v. Davis*, Neb., 51 N. W. Rep. 135.

165. NEGOTIABLE INSTRUMENT — Forgery—Evidence.—In an action upon a note, claimed by the defendant to be forged, it is not competent for him to introduce evidence tending to prove that the payee had, at other times, and unconnected with the note in suit, negotiated paper alleged to be forged.—*Monitor Plow Works v. Born*, Neb., 51 N. W. Rep. 129.

166. NEW TRIAL — Newly-discovered Evidence.—The rule that a new trial will not be granted for a newly-discovered evidence that is merely cumulative does not apply to evidence which is cumulative of the testimony on cross-examination of an adverse witness, incidentally favorable to the moving party.—*White v. Nafus*, Iowa, 51 N. W. Rep. 5.

167. OFFICE AND OFFICERS — Filling Vacancy.—Under Const. art. 4, § 8, authorizing the governor to nominate, and with the advice and consent of the senate appoint a superintendent of public instruction for a term of four years, and also to fill vacancies in offices to which he may appoint, during the recess of the senate, by granting commissions which shall expire at the end of the next session of the senate, an appointment was made during recess: *Held*, that a subsequent nomination to and confirmation by the senate of the same person extended the original appointment for the balance of the unexpired term.—*Commonwealth v. Waller*, Penn., 23 Atl. Rep. 382.

168. OFFICE AND OFFICERS — Township Trustee — Vacancy.—The word "elected," employed in Const. art. 15, § 3, which provides that an officer shall hold his office "until his successor shall have been elected and qualified," cannot be construed to mean "chosen" or "designated," so as to deprive an incumbent of his office by the appointment of a successor.—*Kimberlin v. State*, Ind., 29 N. E. Rep. 773.

169. OLEMARGINE — The act of May 21, 1885, declaring void contracts for the sale of oleomargarine, has no application to a sale and delivery of that material made in another State, and cannot operate to prevent the recovery of the purchase money therefor in the courts of Pennsylvania from a purchaser there, to whom the material was shipped, and who intended to resell the same in violation of the act of 1885.—*Braun v. Keally*, Penn., 23 Atl. Rep. 389.

170. PARTNERSHIP.—An instruction that if the said defendant was, "with knowledge and consent," held out to the public as a partner, he might be charged as a partner, was erroneous, in seeking to fasten liability upon him whether he was held out with his own knowledge and consent or not, and because there was no evidence that the claim sued on had been contracted upon the faith that he was a partner.—*Levy v. Alexander*, Ala., 10 South. Rep. 394.

171. PARTNERSHIP—Foreign Laws.—Where it is con

tended that the law of a foreign State should govern in a certain case, but there is no evidence as to what that law is, it will be presumed it is the same as the law of the tribunal.—*Mortimer v. Marder*, Cal., 28 Pac. Rep. 814.

172. PARTY-WALLS—Statute of Frauds.—An oral agreement for the erection of a wall on the line between two owners is a special agreement, within the meaning of section 2030, and can be proven only as provided therein.—*Price v. Lien*, Iowa, 51 N. W. Rep. 52.

173. PENSIONS—Procuring Payment—Compensation.—At the instance of an ignorant pensioner, an attorney filled out the vouchers necessary to obtain the first payment, forwarded them to the proper pension agent, received the latter's check, procured the pensioner's indorsement thereto, and drew the money: *Held* that, although he had no hand in procuring the allowance of the pension, he was still a "person instrumental in prosecuting the claim," within the meaning of Rev. St. U. S. § 5485, which makes it a misdemeanor for such a person to retain a greater compensation than is allowed by the pension laws.—*United States v. Reynolds*, U. S. D. C. (S. Car.), 48 Fed. Rep. 721.

174. PLEADING—Affidavit of Defense.—In an action on a note by an indorsee, an affidavit of defense, alleging that defendant, under duress, gave the note for rent; that the lessor, by failure to furnish steam as agreed in the lease, caused defendant damage exceeding the value of the note; and that plaintiff is not a *bona fide* holder, but that the lessor is bringing suit in plaintiff's name to avoid the defense—is valid, though it fails to set out the lease, and admits that defendant, with knowledge of the damage, gave the note after the rent was due.—*Devlin v. Burns*, Penn., 23 Atl. Rep. 875.

175. PLEADING—Attachment—Abatement.—Where defendant in attachment, a non-resident, files a plea in abatement, and answers to the merits, it is error to strike out the plea in abatement because plaintiff filed no replication thereto.—*Third Nat. Bank of Chattanooga v. Foster*, Tenn., 18 S. W. Rep. 267.

176. PLEADING—Moneys Collected by Attorney.—The petition construed, and *held* to state a cause of action against an attorney for money collected by him in the course of his employment, and in his hands, belonging to his client.—*Fletcher v. Cummings*, Neb., 51 N. W. Rep. 144.

177. PLEADING PAYMENT.—In an action for wages in conducting defendant's business, under the denial that there is now due from defendant to plaintiff any sum whatever for services, defendant may show payments made by plaintiff to himself out of the business, and which he had not charged to himself, though he kept the books, though no payment was pleaded.—*Mickle v. Heinlen*, Cal., 28 Pac. Rep. 784.

178. PRESCRIPTION — Obstruction of Private Way.—Where defendant erected a building, which encroached on plaintiff's easement in a private way, without serious objection at the time, which was acquiesced in by plaintiffs, with other parties interested, for nine years, the refusal to order a removal of a portion of the building was a proper exercise of equitable discretion.—*Green v. Richmond*, Mass., 29 N. E. Rep. 770.

179. PUBLIC LANDS — Bounties—Res Judicata.—Where the adjutant general, in granting certificates under act Feb. 9, 1850, decides that a certain decedent was the head of a family, that decision cannot be questioned collaterally.—*Smith v. Walton*, Tex., 18 S. W. Rep. 217.

180. RAILROAD AID GRANT—Pre-emption.—The title of a railroad company, beneficiary, to lands granted by act of May 15, 1856, to the State of Iowa to aid in the construction of certain railroads, does not attach until the map of definite location is filed in the general land-office, and, where a pre-emption right attaches to land before the filing of such map, although after the line of the road is surveyed and staked out over it, it will not pass under the grant to the railroad.—*Sioux City & I. F. Town Lot & Land Co. v. Griffey*, U. S. S. C., 12 S. C. Rep. 362.

181. RAILROAD COMPANIES—Failure to Fence.—Under the laws of Louisiana, railroad companies are not compelled to fence in their tracks, and it is not negligence on the part of said companies to neglect to fence their tracks at a point where there is no public crossing.—*Crilly v. Texas & P. Ry. Co.*, La., 10 South. Rep. 400.

182. RAILROAD COMPANIES—Municipal Aid.—Acts 1876, p. 110, § 7, provides that, should the taxes voted in aid of any railroad under the provision of the act remain in the county treasury more than two years after the same have been collected, the right of the railroad company to the taxes shall be considered forfeited, and such taxes shall be refunded to the tax payer: *Held*, that the fact that a railroad company allowed a tax, voted in its aid, to remain in the treasury beyond the specified time, because it did not know that the money was in the treasury, and because it erroneously believed the tax levy to be invalid, would not relieve it from a forfeiture under said statute.—*Cedar Rapids, I. F. & N. W. Ry. Co. v. Elseffer*, Iowa, 51 N. W. Rep. 27.

183. RAILROAD COMPANIES—Receivers. — An order by the United States circuit court, which appointed a receiver for a railroad company, discharging him, and returning the property to the company, and providing that the property shall be relieved from any liability on claims not established by intervention in the suit in which the receiver was appointed, cannot affect the company's liability for injuries to a passenger while the road was in the receiver's hands, the receiver having used in improvements sufficient earnings to pay the claim, nor prevent such passenger from enforcing his claim against the company by suit in the State court. — *Texas & P. Ry. Co. v. Watts*, Tex., 18 S. W. Rep. 312.

184. RAILROAD COMPANIES — Signals at Highway Crossings.— Plaintiff securely hitched his horse in his barn near a highway crossing in a village, and closed and latched the barn door. By some means unknown, and without his knowledge, the horse escaped and wandered upon the crossing: *Held*, that plaintiff was not guilty of contributory negligence, and for an injury caused by a failure to give the crossing signals plaintiff could recover. — *Chicago, St. L. & P. R. Co. v. Fenn*, Ind., 29 N. E. Rep. 790.

185. RAILROAD COMPANIES—Taxation of Right of Way.—A railway company owns a right of way, grading, culverts, etc., running through two or more counties of the State. It has owned this right of way for years, but there is no superstructure thereon: *Held* that, under section 39 of the revenue law the right of way, etc., was subject to assessment by the local assessor, and that a petition to enjoin taxes so levied would be dismissed for want of equity.—*Republican Val. & W. R. Co. v. Chase County*, Neb., 51 N. W. Rep. 132.

186. RAILROAD CROSSING — Negligence. — A traveler has no right to attempt to cross a railway track in front of an approaching train at what is nothing more than a common country crossing, although it is within the limits of a city, or to use a part of the railway within said limits as a footpath, relying solely upon the expectation or belief that the trains will be run not to exceed a certain rate of speed fixed by city ordinance.—*Studley v. St. Paul & D. R. Co.*, Minn., 51 N. W. Rep. 115.

187. RAILROAD FENCES — Limitation. — An action brought May 11, 1886, against a railroad company, for damages for removal of a five-board fence inclosing the right of way through plaintiff's farm, is barred by limitation, where it appears that the removal took place in 1880, the cause of action accruing at that time.—*Hunter v. Burlington C. R. & N. R. Co.*, Iowa, 51 N. W. Rep. 64.

188. REAL ESTATE AGENTS— Commissions.—A real estate agent, who procures a purchaser ready, able and willing to purchase at the price and on the terms directed by the owners, is entitled to his commission, though the land has been sold by the owner several days before, but without notice thereof to the agent.—*Woodall v. Foster*, Tenn., 18 S. W. Rep. 241.

189. RECEIVERS— Action in Another State. — Judicial comity does not allow a receiver appointed in a creditors' suit in an Illinois court to maintain a suit in Wisconsin to set aside an alleged fraudulent conveyance from the debtor to defendant. — *Filkins v. Nunnemacher*, Wis., 51 N. W. Rep. 79.

190. RECEIVERS OF RAILROADS—Injury to Employee.— In an action against the receivers of a railroad company for injuries to an employee resulting from the defective condition of the track, where it is not sought to charge the receivers personally, it is no defense that the defect existed when the receivers took possession, and that they had not been in charge a sufficient time to enable them to repair it. — *Bonner v. Mayfield*, Tex., 18 S. W. Rep. 805.

191. RIOTS — Right of Sheriffs to Call out National Guards.—Where, at the request of a deputy-sheriff to a colonel, the governor orders out troops to quell a riot, the troops do not become a part of the sheriff's *posse comitatus*, but are in the service of the State.— *Chapin v. Ferry*, Wash., 28 Pac. Rep. 754.

192. SALE — Warranty. —A warranty that a cotton-press will press "at the rate of 60 bales per hour," is not a warranty that it will press at that rate for a day of 10 hours, but only for a limited time.—*Hazlehurst Compress & Manuf'g Co. v. Boomer & Boschert Compress Co.*, U. S. C. C. of App., 48 Fed. Rep. 803.

193. SALE OF HORSE— Breach of Warranty.—Where the purchaser of a horse returns him the next day because not kind, as warranted, and the horse dies two days later, and, in an action by the purchaser to recover the price paid, it is shown that the horse was not kind, the burden of proof is on the seller to show that the horse died from injuries received while in the purchaser's possession.—*McKnight v. Nichols*, Pa., 23 Atl. Rep. 399.

194. SEDUCTION — Burden of proof.—In an action under Pen. Code, § 266, imposing a penalty for the seduction of "an unmarried female of previous chaste character," the fact that the woman alleged to have been seduced was unmarried must be proven by direct evidence.—*People v. Krusick*, Cal., 28 Pac. Rep. 794.

195. SET-OFF— Use and Occupation.— In an action for use and occupation, defendant cannot set off damages accruing to his commercial credit from plaintiff's tort in suing out against him an illegal distress warrant.—*Groetzinger v. Latimer*, Pa., 23 Atl. Rep. 393.

196. SHERIFFS— Amendment of Return.—The district court has power to permit a sheriff to amend his return on a process to conform to the facts upon proper showing and notice to the parties interested, and the permitting of such an amendment will not be disturbed by the supreme court where it appears there has been no abuse of discretion. — *Shufeldt v. Barlass*, Neb., 51 N. W. Rep. 134.

197. SHERIFF — Failure to Execute Process. — In an action against a sheriff for failure to execute process, a petition which alleges that the sheriff levied on money as that of defendant debtor, and, on a claim of a third person that the money belonged to him, released it, and then garnished such third person, but which does not allege that said money was the property of the judgment debtor, nor that it was lost by the negligence of the officer, nor any facts showing injury by the sheriff's negligence, does not state a cause of action.— *Hawkeye Lumber Co. v. Diddy*, Iowa, 51 N. W. Rep. 2.

198. SPECIFIC PERFORMANCE.— A contract for the sale and delivery of certain bonds of the city of Portland is not such a contract as a court of equity will specifically enforce, for the damages which may be recovered in an action at law for the non-delivery will compensate for the same.— *Rollins Invest Co. George*, U. S. C. C. (Oreg.), 48 Fed. Rep. 776.

199. SPECIFIC PERFORMANCE— Contract.—Specific performance of a contract cannot be demanded as an absolute right, as it rests largely in the discretion of the court, to be exercised in strict conformity to equity and justice.— *City of New Orleans v. New Orleans & N. E. R. R.*, La., 10 South. Rep. 401.

200. SUMMONS— Service on Partnership.—The sheriff's service of a summons upon the defendants may, for good cause, be set aside on motion supported by affidavit. If the summons is served by leaving a copy thereof at the wrong place, the defendants, on motion to set the service aside, made before answering to the merits of the action, may be allowed to disprove the officer's return.— *Grady v. Gosline*, Ohio, 29 N. E. Rep. 768.

201. SUNDAY LAWS — Works of Necessity.—Whether pumping an oil well on the Sabbath is a work of necessity, within the meaning of Act April 22, 1794, is a question of fact, and not of law — *Commonwealth v. Gillespie*, Pa., 23 Atl. Rep. 393.

202. SUPREME COURT—Election Contests.—There is no power in the legislature to constitute the supreme court a board to try contests of elections, as the powers and duties of the court are essentially judicial in their nature, and cannot be preverted from that purpose.—*Miller v. Wheeler*, Neb., 51 N. W. Rep. 137.

203. TAXATION— Illegal Assessments.— Where an assessor assessed a large body of lands belonging to the plaintiff, of various values, at a uniform value, without reference to the local advantages of the various parts of the tract or tracts, and beyond the cash value of the whole, and relatively at a much greater value than the lands of resident tax payers, for the purpose of favoring the latter at the expense of the former, equity will restrain the collection of a tax levied upon such an assessment, when it further appears that the collection of the tax will cast a cloud upon the title of the plaintiff, and involve the party in a multiplicity of suits. — *California & O. Land Co. v. Gowen*, U. S. C. C. (Oreg.), 48 Fed. Rep. 769.

204. TAXATION — Real Estate — Water-Works. — The buildings and machinery of a water-works company, located on land under a lease to continue as long as the water-works should operate, are, for purposes of taxation, real estate, and the whole plant, with the appurtenant mains, pipes, hydrant, etc., is assessable as an entirety in the township where the main works are located.— *Oskaloosa Water Co. v. Board of Equalization of City of Oskaloosa*, Iowa, 51 N. W. Rep. 18.

205. TAXATION— Res Adjudicata. — Under Rev. St. ch. 120 § 277, which provides that when a tax on property liable to taxation is prevented from being collected for any year or years by reason of any erroneous proceeding, the amount of such tax may be added to the tax on such property for any subsequent year, a judgment rendered in favor of a delinquent tax payer on account of informality in the assessment is no bar to an application for judgment for the same taxes the following year.—*People v. Chicago & A. R. Co.*, Ill., 29 N. E. Rep. 730.

206. TAX-DEED—Limitation.— Laws Fla. 1874, ch. 1976, § 63, providing that suits to recover lands sold for taxes shall not be brought later than one year from the recording of the tax-deed, is not available in favor of a purchaser whose deed is void because the description therein varies materially from that of the assessment roll.—*Bird v. Benlisa*, U. S. S. C., 12 S. C. Rep. 323.

207. TAX LIEN—Limitations.—An action to foreclose a tax-lien is barred at the expiration of five years from the time the cause of action accrued.— *Black v. Leonard*, Neb., 51 N. W. Rep. 126.

208. TAX-TITLE — Tenants in Common.— One of two tenants in common had exclusive possession of the land under an arrangement with his co tenant that he should receive all the rents and pay all the taxes. After his death his wife retained possession of the land and collected the rents, but allowed the property to be sold for taxes, and took a deed to herself from the purchaser at tax sale: *Held*, that she thereby acquired no title as against her co-tenant, since it was her duty to have paid the taxes. — *McChesney v. White*, Ill., 29 N. E. Rep. 709.

209. TENANTS IN COMMON.—Where a tenant in common of an estate for years purchases the fee of the premises before the expiration of the term, he does not hold the fee-title in trust for his co-tenant and himself, since the reversionary title so acquired is not hostile to the leasehold title held by the two. — *Ramberg v. Wahlstrom*, Ill., 29 N. E. Rep. 727.

210. TRIAL — Non-production of Books of Account.—Where the court, in a penal action, refuses to compel a party to produce his books of account for inspection, on the ground that they will furnish evidence against him, the counsel of the opposite party will not be permitted, in their remarks to the jury, to comment on the refusal of defendant so to produce the books of account.—*Boyle v. Smithman*, Pa., 23 Atl. Rep. 397.

211. TRUSTS — Equity. — Where personal property is conveyed in trust to secure the payment of a note, and the trustee sells the property and mingles the proceeds with his own funds, a court of equity may compel him to pay the trust fund to the holder of the note. —*Halle v. National Park Bank of New York*, Ill., 29 N. E. Rep. 727.

212. USURY—Broker's Commissions.— Upon a loan by a broker of money of his principal, a note therefor, including his commission for procuring the loan, given by the borrower with knowledge of the facts, is not usurious, where the money was not placed by the principal in the hands of the broker to be loaned at usurious rates.—*Ammerman v. Ross*, Iowa, 51 N. W. Rep. 6.

213. USURY—Deed as Mortgage. — Where one who has conveyed his land as security for a usurious debt takes from the grantee a bond for title containing a covenant to pay rent to such grantee until a deed should be made according to the bond, it does not thereby estop himself from asserting that the conveyance was not an absolute deed, since a party cannot bind himself by an estoppel where his express agreement would not be binding because contrary to law.—*Josie v. Davis' Adm'r*, Ark., 18 S. W. Rep. 185.

214. VENDOR AND VENDEE — Warranty Deed.— Where one purchased a life-estate on a contract for a deed with warranty of title, and afterwards, on partition by the heirs, purchased the remainder estate, he was entitle to deduct the amount of the latter purchase from the contract price.—*Roller v. Effinger's Ex'r*, Va., 14 S. E. Rep. 337.

215. VENDOR'S LIEN.—Plaintiff transferred to defendant certain land, taking the note of defendant and her husband for the purchase money, and retaining in the deed a lien thereof. Defendant's husband induced plaintiff to surrender to him the note as payment for other land, which he, by false and fraudulent representations, sold and agreed to convey to plaintiff: *Held*, that plaintiff could, in equity, recover the purchase money due on his note, and could enforce the lien therefor against the land conveyed by him to defendant.—*Thompson v. Bimore*, Ky., 18 S. W. Rep. 235.

216. WATER COMPANY — Insufficient Supply of—Liability for Fires. — A contract on the part of a water company with a municipal corporation to supply the "city and inhabitants thereof with water for public and private uses, for public and private consumption, and for putting out fires," establishes no contract relations between the company and private persons, and creates no liability on the part of the company to respond in damages for losses caused by its failure to supply a sufficient quantity of water for the extinction of fires.—*Britton v. Green Bay & Ft. H. Water-Works Co.*, Wis., 51 N. W. Rep. 84.

217. WATERS—Navigable Stream—Obstruction.—Where a railroad company obtains from the State a charter to build a particular line of road, which crosses a navigable stream, the obstruction of that stream while building a bridge over it is not in violation of Code (Mill & V.) § 1527, prohibiting the obstruction of a navigable stream, where such obstruction extended over no more of the stream at any one time, and was continued for no longer period than was absolutely required.—*Cantwell v. Knoxville, etc. R. Co.*, Tenn., 18 S. W. Rep. 271.

218. WATERS—Removal of Obstructions.—The owners of a tow-boat has no right, merely in the general interest of navigation, to break up and destroy the coal-boat of another, which been has sunk, but only in case he is unable to pass the said boat without seriously endangering his own boat.—*Gumbert v. Wood*, Pa., 23 Atl. Rep. 404.

219. WIFE'S SEPARATE ESTATE.—Under Code, § 2481, providing that a husband and a wife shall not be dispossessed of the real estate of the wife by any judgment against the husband, where a stranger has taken possession of the land of the wife, and a joint action by the husband and wife is barred by limitation, the wife can sue in her own name, and need not wait until the death of her husband to enforce her right.—*Key v. Snow*, Tenn., 18 S. W. Rep. 251.

220. WILLS—Attestation. — The attesting witness did not inspect the instruments to which he requested the devisee to sign his name, nor did he put any mark or sign on it to render subsequent recognition assured. He did not know any of its contents, and he was not asked to identify it, when his deposition was taken: *Held*, that the subscription was invalid.—*Simmons v. Leonard*, Tenn., 18 S. W. Rep. 280.

221. WILLS—Construction—Life-estate.—A will, after providing for the payment of testator's debts, directed the executor to "deliver the remainder to my wife, who is requested and expected to manage same to the best advantage in caring for and educating the children and supporting herself:" *Held*, that such will vested only a life estate in the widow.—*Weaver v. Weaver's Ex'r*, Ky., 18 S. W. Rep. 228.

222. WILLS—Construction.—Under a clause in a will providing that "it is my distinct will and desire that none of the effects, real, personal, or mixed, as above devised and bequeathed to my children, or to either of them, can be seized upon or levied upon for any debt or claim whatsoever," against any of them, a legacy given by the will cannot be attached in the hands of the executor.—*In re Goe's Estate*, Pa., 23 Atl. Rep. 383.

223. WILLS—Construction of Devise.—A devise to E in fee-simple, with remainder over "in case she should die without leaving lawful issue," in the absence of anything in the will to change the technical meaning of the word "issue," or to show that the testator meant "children" or issue living at a particular period, creates an estate in fee tail, which is converted by Act Pa. 1855, into a fee-simple.—*Ray v. Alexander*, Penn., 23 Atl. Rep. 383.

224. WILL — Re-enactment of First Will.—Where a testator bequeaths a life-estate in all her property to her brother, with remainder to certain persons, and, after her brother's death, makes another will, "hereby revoking all former wills," appointing a new executor "of this, my last will and testament," disposing of the property left her by her brother, and bequeathing her other property to the remainder-men named in her first will, "re-enacting so much of said will as refers to bequests made" to them, the executor named in the first will has no right to administer thereon.—*In re Nelson's Will*, Pa., 23 Atl. Rep. 373.

225. WILLS—Specific and Demonstrative Legacies.—A bequest of "$2,000 of the South Ward Loan of Chester, Pennsylvania," by a person owning $10,000 worth of bonds known by that designation, is a demonstrative, and not specific, legacy, and is not adeemed by the payment of the bonds before the testator's death.—*Ives v. Canby*, U. S. C. C. (Del.), 48 Fed. Rep. 718.

226. WITNESS—Value. — In an action to recover for services rendered defendant on his farm, one of plaintiff's witnesses testified, on cross-examination, that he had stated to defendant's counsel before the trial that plaintiff's services were worth a certain amount: *Held*, that he should be allowed, on redirect examination, to state that he meant such amount would be proper as a compromise.—*Loy v. Petty*, Ind., 29 N. E. Rep. 788.

ABSTRACTS OF DECISIONS OF THE MISSOURI COURTS OF APPEAL.

ST. LOUIS COURT OF APPEALS.

ADMINISTRATION — Removal of Administrator. — If upon a survey of the whole administration it appears that the administrator is wasting the estate or abusing his trust to the prejudice of those beneficially interested in the estate, a just ground for removal is shown. Affirmed.—*Owens v. Link.*

BILL OF EXCEPTIONS—Record—Stenographer's Notes. —A skeleton bill of exceptions which merely refers to attached copies of the official stenographer's notes as evidence in the case is not sufficient. The copy of the evidence given at the trial should be written out and capable of being identified as the evidence by the judge when he signs the bill. Affirmed.—*Gorwyn v. Anabel.*

BREACH OF THE PEACE—Evidence.—The uttering of loud and indecent words against a justice of the peace while engaged in his judicial duty, making out a transcript for a change of venue, accusing him of having set on foot the criminal charges which were about to be tried before him, is "loud and offensive or indecent conversation" and a breach of the peace within Rev. Stat. Mo. 1889 § 3784. Reversed.—*State v. Sturges.*

CARRIERS OF LIVE-STOCK—Liability—Evidence.—The liability of a carrier for the safe transportation of live-stock is an exception to the rule making the carrier an insurer of safe delivery, only so far as the burden of proof is concerned. The shipper must not only show receipt in good condition and delivery in a damaged condition, but he must go further and show an injury by human agency. The danger from disease or vice inherent in the animal is a danger which the shipper assumes and not the carrier. But it does not follow that such injury must be shown by direct evidence to have resulted from the carrier's negligence to put upon him the burden of showing due diligence. Where it appeared that poultry shipped in apparent good condition properly cooped, in suitable weather, was, after a comparatively short run, delivered to the consignee with more than one-third of the number dead, the shipper made out a *prima facie* case and it was incumbent on the carrier to show that it had used all proper care. Reversed.—*Hance v. Pacific Ex. Co.*

CHATTEL MORTGAGE—Power of Substitution—Fraudulent Conveyance.—A chattel mortgage which does not confer upon the mortgagor any general power of sale or any general power of substitution by way of sale but which confers a power of substitution for the purpose of supplying breakage, loss or waste of the property, is not in law fraudulent. Reversed and remanded.—*Jennings v. Sparkman.*

CONTRACT—Modified Proposition.—The submission of a written contract for a party's signature is a proposition which must be accepted or rejected as made. The addition of material matter is a rejection of the proposition and the making of a counter proposition. But where a copy of the contract so modified is duly signed and returned to the party submitting the original proposition, and he proceeds to act upon it, the jury are authorized to infer from that fact that he had read it and assented to the modification. Reversed.—*Robertson v. Tapley.*

DIVORCE—Recrimination—Evidence.—1. The general rule, under the Code, that affirmative matter of defense must be pleaded, applies to divorce proceedings only so far as to preclude a defendant from giving evidence of recriminatory matter which he has failed to plead. The court, in its discretion, in protection of the interests of the public, which is a third party to such proceedings, may admit evidence of such facts though not pleaded. 2. Recrimination in divorce law is the defense that the applicant has himself been guilty of conduct which is itself ground for divorce. No misconduct, however reprehensible, which falls short of that will afford a bar in recrimination. Affirmed.—*Owen v. Owen.*

EMINENT DOMAIN—Condemnation of Land for the Enlargement of a Public Cemetery.—1. Statutes authorizing the condemnation of private property for public purposes must be strictly pursued. Under a statute (Rev. St. Mo. § 2736) providing that commissioners to assess damages shall be resident "free-holders," the appointment of commissioners by an interlocutory judgment which designates them as "house-holders," will render the proceeding void. 2. The statute (Rev. Stat. § 989) authorizing the condemnation of land for the enlargement of a public cemetery does not extend to the condemnation of a road from a public highway to the cemetery, nor have the commissioners in such proceeding any power to fix the location of such road. Reversed.—*Fore v. Hoke.*

EXECUTION—Attachment—Levy. — A levy of attachment by sheriff which fails to state that the property levied upon was the property of A, the defendant in the attachment, or that A had any right, title or interest in the property levied upon, the levy is bad and will not create a basis for personal injuries against him. Reversed and remanded.—*Newton v. Strong.*

GAMING—Wager on Election—Liability of Stakeholders.—Under § 5216 Rev. Stat. 1889, which makes a stakeholder who knowingly receives money staked upon any betting liable to the parties who have placed such money or property in his hands, the stakeholder will not be liable to such action if he delivers over the money or anything bet to the winner after the determination of the bet and before he has notice from the loser not to do so. Affirmed.—*Weaver v. Harlan.*

JUDGMENT—Fraud— Equity. — Fraud which will warrant a court of equity in enjoining a judgment at law must not merely be a fraud in the claim which has ripened into judgment, but it must be a fraud in the procurement of the judgment itself—in other words, a fraud in the very concoction of the judgment. Affirmed —*Link v. Link.*

JUDGMENT — Opening Highway—Void Proceedings.— Where a judgment rendered by a county court in the condemnation of land for highway is void for failure to comply with the statutory requirements as to jurisdictional facts, all who attempt to execute it become trespassers *ab initio*, and equity will not enjoin its execution except in cases where it would enjoin the commission of a trespass, since in ordinary cases the complainant has an ample remedy at law. Reversed and remanded. —*Taylor v. Todd.*

LIFE INSURANCE—Conflict of Laws—Waiver.—When an insurance company does business in the State of Missouri and issues its policies to residents of that State, the validity of clauses in its policies must be determined by the laws of that State. The laws of the State establish a rule of public policy which overrides the freedom of contract of the parties and makes waivers of statutory provisions ineffectual although such waivers are contained in the strongest terms of the policies. Affirmed.—*Price v. Conn. Mut. Life Ins. Co.*

MARRIED WOMAN — Personal Property — Replevin.— Where a stock of goods was purchased with the wife's money and afterwards the husband without consulting her proceeded to carry on business in his name, and without the knowledge or consent mortgages the goods to secure the debts incurred in his own name for other goods, her title is not divested by the act of her husband and she can maintain replevin against the mortgagee. Affirmed.—*Hauson v. Keet, etc. Co.*

TRIAL—Negligence—Improper Remarks of Counsel.— Where counsel in argument has deliberately argued outside of the record, and has resorted to language highly improper and prejudicial and has persisted in so doing after repeated objections by opposing counsel and in the face of repeated admonitions of the court, the error is not cured by the court's instruction to the jury to disregard the statements but is ground for reversal Reversed and remanded.—*Wilburn v. St. Louis, etc. Ry Co.*